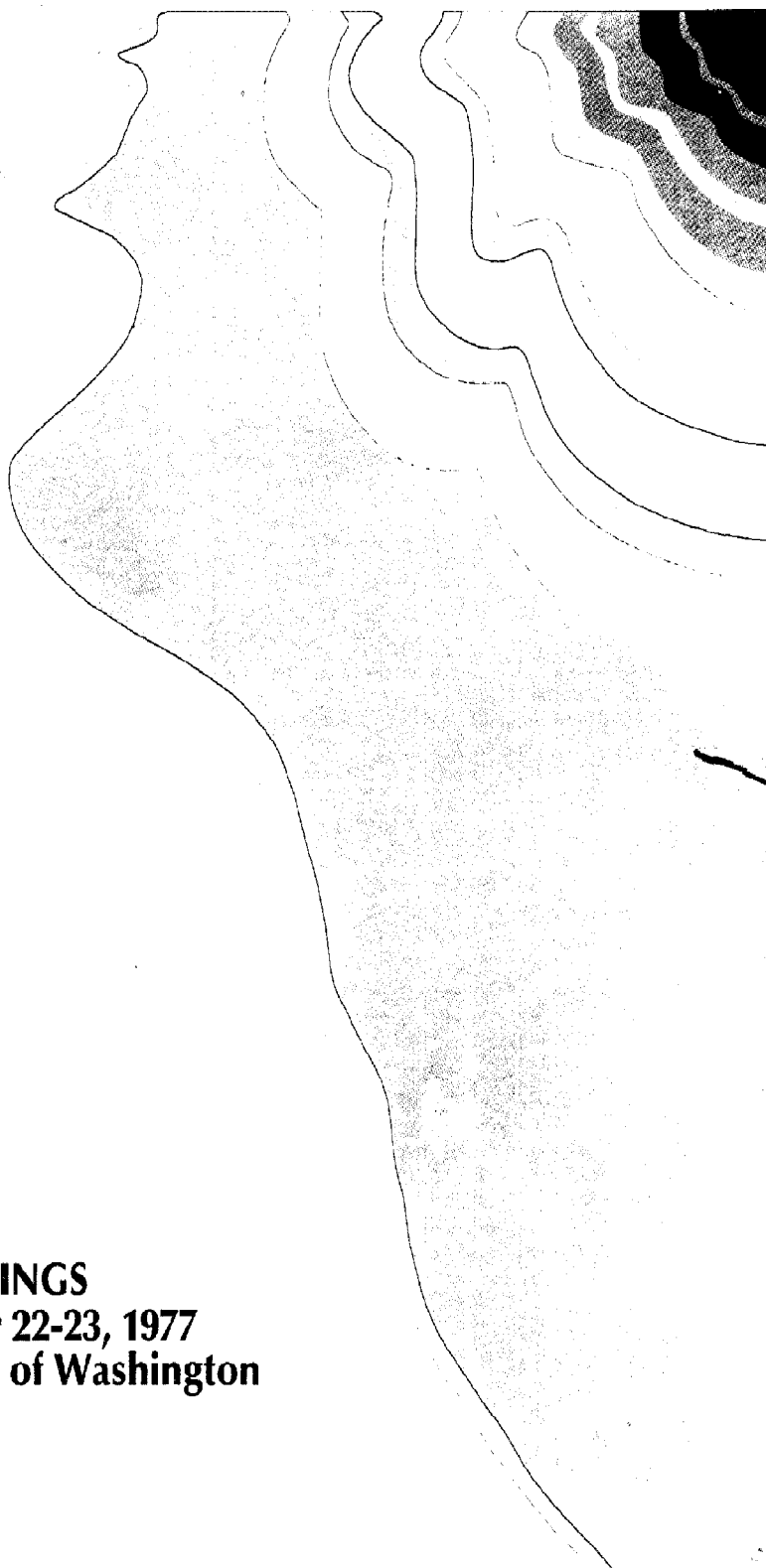


# SHORELINES MANAGEMENT '77 PERFORMANCE AND PROSPECTS



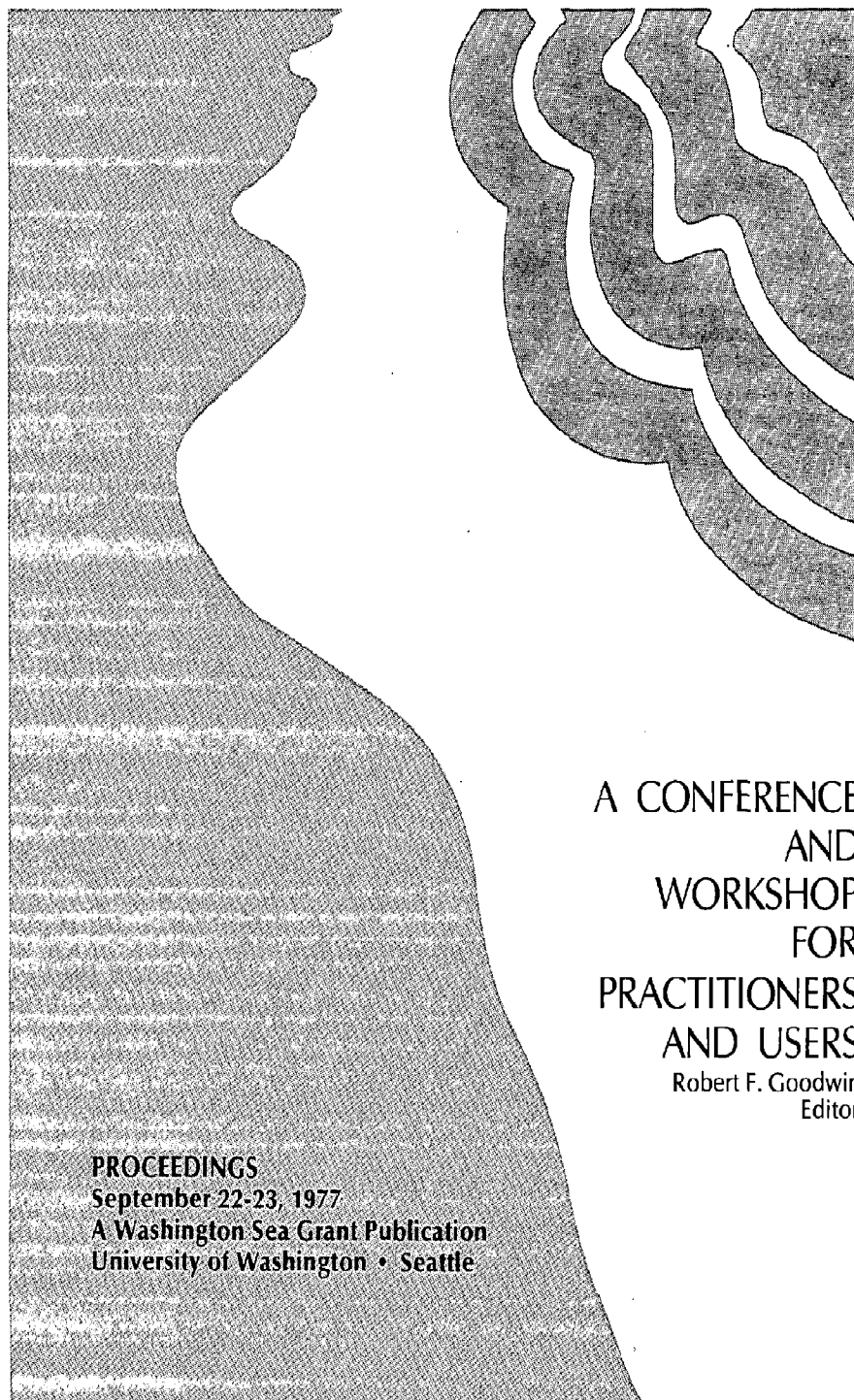
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## **SHORELINES MANAGEMENT '77**

**SHORELINES  
MANAGEMENT '77**  
PERFORMANCE AND PROSPECTS



A CONFERENCE  
AND  
WORKSHOP  
FOR  
PRACTITIONERS  
AND USERS

Robert F. Goodwin  
Editor

PROCEEDINGS  
September 22-23, 1977  
A Washington Sea Grant Publication  
University of Washington • Seattle



# **SHORELINES MANAGEMENT '77 PERFORMANCE AND PROSPECTS**

**ROBERT F. GOODWIN  
EDITOR**

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# FOREWORD

Shorelines management in Washington State is entering its seventh year. Virtually all local governments with marine or freshwater resources now have approved Master Programs guiding the conservation and development of their shorelines.

Washington's experience in administering the Shorelines Management Act has received national attention, and approval of its Coastal Management Program--the nation's first--makes it a model for other states.

Procedures for administering the Shorelines Management Act are well understood, but some substantive guidelines are yet to be developed, notably the management of aquatic areas and of urban waterfront development.

Just as the last local Master Programs are being approved, earlier ones are being amended and refined. How they will incorporate recent findings from contracted studies dealing with geological hazards, aquatic areas management, the relationship between zoning regulations and coastal management in the second tier and the study of "drift sectors" in the coastal zone were the crucial questions addressed in the conference.

Further, the carrot of "federal consistency" in coastal management is largely untested--how, for example, does local government deal with federal consistency? Key policy issues, notably the siting of an oil port for receiving Alaskan crude, have been explored through papers appearing in the Proceedings.

It is hoped that the information now available in these Proceedings will be of use to those charged with implementing, evaluating, or amending the Washington Coastal Management Program and the formulation of local governments' Shorelines Master Programs.

Robert F. Goodwin

**SESSION A:  
SHORELINE ENVIRONMENTAL MANAGEMENT  
AND COMMUNITY DEVELOPMENT**



## STATE-LOCAL COLLABORATIVE PLANNING: A GROWING TREND IN LAND USE MANAGEMENT

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### Summary

Experience Washington has had with the state and local government planning arrangement established by the Shoreline Management Act is of direct relevance to other coastal states following or considering the same process. Similarly, there are some lessons that the Department of Ecology and local governments could learn from other states travelling down the same road. Washington, like a number of other states, is broadening the scope of its program from a narrow focus on shorelines to a coastal zone perspective. The inland boundary set by the enabling Act may continue to be a problem, particularly in broadening the program's scope. State and local planning efforts have at least established a good foothold on the shoreline and created an institution for coastal zone management. However, it is conjectural whether the program will be able to broaden out and manage coastal systems and to tackle the larger issues that characterize coastal zone management.

### The Collaborative Planning Process

John O'Donnell mentioned in his presentation\* that the Office of Coastal Zone Management has become increasingly aware of the necessity to involve local government in the preparation and implementation of a state's management program. Since at least 1971 and passage of the Shoreline Management Act, Washington has recognized the need to make local government a full partner in coastal management.

During the last twelve years, eleven coastal states and four inland states have passed legislation similar to Washington's Shoreline Management Act,

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\* John O'Donnell's introductory remarks were delivered from notes only and are, unfortunately, not available for inclusion here.

creating a collaborative land use planning arrangement between the state and local units of government. The collaborative planning process, in its fully developed form, consists of ten procedural steps.\*

- State development of objectives, policies, and guidelines
- Preparation of local programs
- State review and evaluation of local programs
- Negotiation to resolve conflicts and program approval or denial
- Sanctions imposed if an acceptable program is not approved
- Local implementation of programs
- Monitoring program implementation
- Appealing actions deemed to be inconsistent with a local program
- State review of proposed amendments to local programs
- Sanctions imposed if local program is not adequately implemented

The collaborative planning process ("CPP") is the most popular model among the coastal states that are implementing coastal zone management acts. The process corresponds to one of the three options specified by the Federal Coastal Zone Management Act for implementing a state's program, namely:

- State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. (Section 306(e)(1)(A)).

Wisconsin has the oldest program dating to passage of its Shoreland Management Act in 1966. Since then ten other coastal states have passed legislation mandating a similar state-local process: Minnesota (1969), Michigan (1970), Maine (1971), Washington (1971), Oregon (1973), North Carolina (1974), Florida (1975), California (1976), Alaska (1977), and South Carolina (1977). Ohio, Illinois and Louisiana are now considering legislation using the same model to implement their coastal zone management programs.

Review of the recent literature on land use planning indicates the following seven factors have motivated coastal (as well as inland) states to select the collaborative planning approach.

- Decrease uncertainty in plan-making
- Develop an affirmative policy position
- Streamline the regulatory process
- Manage the systems which span local jurisdictions
- Manage resources of state or regional concern
- Accommodate local variation among jurisdictions
- Facilitate accountable and representative decision-making

All these factors have been mentioned by one or more speakers at this conference. They are the today's litany of land use planning.

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\* Washington's program has nine of the ten steps. The Act does not give the state explicit authority to impose sanctions if a master shoreline program is not adequately implemented by a local government.



The appeal of the collaborative planning approach is attributable to several features. Most of these features are responses to the seven motivating factors. The state's interests are expressed at the outset of the planning process and provide the context for evaluating completed local plans. The state uses its authority only to override local plans that are not considered to adequately reflect statewide or regional interests. Detailed planning remains with the local units of government. Applying generalized state objectives and guidelines to a highly variable set of localized conditions is a local government responsibility.

Local units of government usually have at least three incentives for preparing detailed plans: assistance by the state in the form of grants or services, consistency of state and federal programs with an approved local plan, and avoidance of sanctions that may be imposed by the state.\*

The assemblage and integration of various state and local guidelines into a single specific local land use plan provide a mechanism by which those with stakes in coastal resource development and conservation can obtain greater certainty on how their interests will be affected. The specified time period limits the possibility of indefinitely extending the planning process as a means of deferring plan adoption.

In California and North Carolina, the state-local composition of the state commission administering the coastal zone management program has been cited as an incentive for local government participation in the collaborative planning process. Local governments would be expected to have confidence and rapport with a state agency in which a sizable portion of the members are attuned to the realities of plan making at the grass roots level. It is also evident that local government representation on the state commission should strengthen the hand of locals in negotiation with the state to develop a plan that is acceptable to both perspectives.

#### Research Design

In the spring of 1976 I decided to write my dissertation on nine states' experience with this process.\*\* I assumed that there must be something of scholarly merit one could derive from such an analysis. The project has been supported by the Offices of Sea Grant and Coastal Zone Management.

The research has four objectives:

- Determine if there is a common planning process among the nine coastal states
- Define the essential steps in the process

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\* A fourth incentive in California is the removal of interim regulatory controls within the coastal zone portion of the local jurisdiction once a local coastal program is certified by the state.

\*\* At that time Alaska and South Carolina had not passed their Acts.

- Identify the inherent procedural and analytic problems in each step and the means states have used to deal with these problem areas
- Establish a framework for determining the extent to which the collaborative planning process is achieving the objectives set by the respective enabling acts

The analysis has turned out to be a horrendous endeavor. I would strongly recommend any aspiring doctoral candidate to refrain from conducting a comparative analysis of nine states. One could write a dissertation about each state's program or each of the ten steps in the collaborative planning process. The 386-page description and analysis of nine states is complete. It has been reviewed by state and program administrators. The analysis of how states have dealt with each of the ten steps in the process is nearing completion. Hopefully, the two-volume opus will be published and distributed by the year's end.\*

The analysis is based on interviews with state program managers, university researchers, local government officials in charge of the planning program, and spokesmen for various interest groups, including opponents of the state act.\*\* In all, 97 interviews were conducted, 20 in Washington State. In conjunction with the Coastal Resources Program at the University of Washington, a survey was mailed to master shoreline planners in the state's 38 coastal cities and 15 coastal counties. Forty-eight questions dealt with preparation, administration and implementation of shoreline master programs.<sup>1</sup>

In terms of interviews, I decided to concentrate the analysis on five states; Wisconsin, Maine, North Carolina, California, and Washington. This state was selected for intensive analysis since the five years of collaborative planning present a richer history than any of the other coastal states involved in the process. It was also the first state to establish a permit letting procedure in conjunction with local plan making. Accordingly, as you well know, Washington was the first state to have its coastal zone management program approved by the Secretary of Commerce.

#### The Washington Experience

The federal approval of the state program marked a transition point in the evolution of the Shorelines Management Act. Between 1976 and 1977, 15 coastal counties and 38 coastal cities began the process of transforming their master shoreline programs into coastal zone management plans.

In most cases, the process of change has proceeded in two directions. Master programs are now being related to inland land use plans and offshore

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\* The report will have the same title as this paper.

\*\* Interviews with local government officials were drawn from a cross section of cities and counties according to both size and disposition toward the state program.

environments, as well as integrated into regional management, plans that conform to coastal resource systems. California, Wisconsin, Minnesota, and Maine are going through a similar process of broadening the geographic scope of their programs.

Obviously, OCZM's \$2,000,000 grant, shared by DOE and local governments, was a primary motivation for the shorelines-coastal zone evolution. It might be argued that cities and counties would eventually take these directions in revising their master programs with or without the incentive of OCZM grants. The assumption would be that local governments will see the benefits of shoreline planning as a program that will serve their best interests, and not as an imposition by the state agencies or outside activists.

#### Coastal systems and the inland boundary problem

The objectives of the Shorelines Management Act are difficult, and in some circumstances impossible, to achieve within the jurisdictional confines of the law, particularly if master programs are implemented by each city and county without regard to coastal systems which go beyond their boundaries. If the SMA has an Achilles heel, it is the 200-foot inland limit. Chris Smith of the Shorelines Hearing Board candidly observed in her presentation that the Shorelines Management Act was only "nibbling at the edges of coastal resources management issues." She stated that the program does not deal with the big issues, such as cumulative impact of many separate developments within the same coastal system.

The SMA obliquely recognizes that coastal systems exist. It gives the director of DOE the authority to direct two or more adjacent local jurisdictions to develop a joint program if it appears that regional integration will better serve the purposes of the Act. Regional integration of several jurisdictions sharing a common coastal system has occurred only once. Several local planners now believe that DOE should have encouraged and supported more regional programs for such water systems as the Hood Canal, Skagit Bay, Samish Bay, and the Nisqually Estuary, all of which are bounded by two or more counties.<sup>2</sup>

Many jurisdictions, particularly island governments like San Juan County and Island County, appear to realize that shorelands are components of large-scale environmental and social systems, such as watersheds, highway networks and water systems.<sup>3</sup> Development of presently subdivided lands in coastal systems inland of SMA's 200-foot jurisdiction could adversely affect the environmental amenities of the shoreland. Many local governments are now cognizant of the need to relate the master programs to land use plans for managing coastal systems.<sup>4</sup> DOE and local governments would do well to look at coastal systems and cumulative impact management programs in California, Maine, Oregon and Florida.<sup>5</sup>

While the law does give DOE the authority to force regional integration of two or more jurisdictions' master programs, the 200-foot inland boundary limits the state's ability to persuade local governments to manage beyond-the-boundary land use activities that have direct and significant effect on coastal resources (or access to coastal resources). Although local governments could have inventoried, planned, and managed areas extending further inland than 200 feet, they rarely chose to do so. Yet local planners interviewed did recognize that planning and managing for a 200-foot strip is, at best, an interim arrangement.<sup>6</sup>

For example, urban planners have pointed out that the first public road parallel to the shore is often more than 200 feet inland.<sup>7</sup> Visual and physical access to the shore can be cut off by development on parcels shoreward of the road, but inland of the 200-foot line. As noted by OCZM's impact statement, the 200-foot boundary may, in fact, "tend to increase development pressure on adjacent lands immediately inland from the boundaries."<sup>8</sup> The SMA does require local government review of their plans and policies adjacent to the jurisdiction of the Act in order to achieve consistency with master programs. This inland consistency objective may be achieved over time by a stream of DOE's grants to support coastal planning programs for the "second tier" of the coastal zone.

Although DOE is advocating second tier planning, according to responses from the mail survey, local governments are much more interested in applying their grants to enforcement and administration of the master programs for managing the first tier. Coastal cities and counties see the CZM program as an enlightened effort because it seeks to relieve the existing administrative burden of SMA.<sup>9</sup> Understandably, local governments would place a higher priority on covering costs of administering their existing shoreline management program than expanding the management area and thereby incurring additional administrative expenses. Given the inland boundary limitations of SMA and the locals priority to cover existing administrative costs, it may be wishful thinking to assume that coastal cities and counties will develop effective coastal management plans for areas inland of the Act's jurisdiction.

#### The need for an implementation triad

Presentations by Rosemary Horwood, John Keegan, Jerry Hillis and others have raised the problem of relying on permit regulation to implement shoreline management programs. As Rosemary pointed out, shoreline management is mostly a reactive process. "We are not managing the shoreline, we are reacting to proposals." Certainly one of the objectives of CPP should be to develop an affirmative position to guide and encourage appropriate development activity. This cannot be done with regulation alone. Regulation must be combined with governmental acquisition and contracts programs.

After four years of permit letting in California, the Coastal Commission recognized that regulation, by itself, would not achieve the policies of the *Coastal Plan*. Accordingly, legislation was introduced and passed for acquisition funds and authority for the state to contract for coastal conservation projects. A bond issue was passed authorizing at least 110 million dollars for acquisition and development of park lands. The most innovative piece of land use legislation was the Coastal Conservancy Act. The law created an agency outside the sphere of the Coastal Commission (to keep regulation and development administration apart) with the authority to:

- acquire development rights or easements to preserve agricultural land
- restore degraded areas;
- redesign and resubdivide;
- enhance resources;
- establish buffer zones (resource protection zones);
- temporarily acquire significant coastal resource areas;
- and establish a system of public accessways.

It is evident that regulation, acquisition and contract authorities are mutually supportive activities in implementing land use management plans. Without all three authorities, and appropriate budgetary support, a state will find it difficult, if not impossible, to implement plans that will resolve the substantial issues that motivated creation of a coastal management program.

#### Reasons for success

The approval of Washington's coastal zone management program can be viewed as one indication that the state-local collaborative process established by SMA is working. DOE claims that the success of the coastal shoreland management program is largely due to the joint administration by state and local entities.<sup>10</sup> According to the interviews, responses to the master program survey and notes taken at a mid-year evaluation conference on the State CZM program, there are four major reasons why Washington's state-local process is working: a balance of authority, uniformity and flexibility of the state guidelines, DOE administration, and public participation in local plan making.

The Act divides the authority for permit letting and plan making between local and state government. SMA has a number of checks and balances to assure that neither level of government dominates the process. For example, the separation of state authority between DOE and the Shorelines Hearing Board provides cities or counties with opportunities to present their side of a state-local conflict before a unit of state government not tied to the day-to-day administration of the Act. DOE does not sit as both judge and jury in disputes on permit letting or master programs (as in California and North Carolina).

The state's guidelines were built on the Act's distribution of responsibility, providing a workable blend of required uniformity to meet state objectives and flexibility to accommodate local conditions.

The State guidelines established the uniformity needed among county master programs, and allowed local government to tailor their master program to the circumstances and needs of its shorelines and its citizens.

This is the major reason why this law has been successful.<sup>11</sup>

However, local government officials were also of the opinion that: a new set of guidelines should be developed for master program implementation and administration (variances, conditional uses, amendments). The experience gained during the last four years should be applied to these new guidelines.

Coastal county and city planners have frequently praised DOE's administration of the shorelines management program. This praise may be partly induced by the symbiotic relationship between local planning departments and DOE. At the present time, and probably for the next few years, DOE's allocation of its OCZM grants will contribute a significant share of a local planning office's annual budget. Nevertheless, local planners have asserted that a key factor in making the program work has been DOE's cooperative, responsive and flexible administration of the Act.

Of all the state agencies with which we have frequent dealings, the (Shorelands Management) division of DOE is without question the most responsive and the least bureaucratic . . . We also feel that the bulk of the CZM funds which have been retained by the state have been used wisely and will produce information which will be of considerable assistance to local governments in administering our individual Shoreline master programs.<sup>12</sup>

Effective administration of the Act means that both levels of government must carry out their responsibilities in a mutually supportive manner.

If the local government people are the primary agents for carrying out the program, they must have dependable support from the state and federal and academic people with similar missions. This support must occur in all phases and aspects. The latter 3 groups must put their 'superiority complex' aside and start treating local staff as colleagues, professionals. Of course, some local staff do not realize that 'local control' also means responsible action at the local level. Finally, the state (DOE and AG) must occasionally step in to a messy local situation and *enforce* the law. Too often, flagrant violations are ignored by the state for fear of local criticism.<sup>13</sup>

Flexibility was an adjective frequently used by local planners when praising DOE's administration of the SMA. The point on which DOE appears to have exercised most flexibility was what constituted an acceptable master shoreline program. The agency became increasingly flexible on approval criteria

and standards as more and more programs were submitted for review. In the cases of second submissions of master programs that still had major state-local problems, DOE met local governments more than half way in trying to resolve the differences. One could argue that DOE may have been too flexible and "given away the barn" in bending the standards, or making exceptions in approving a number of programs. However, the benefits of maintaining good rapport with local governments and approving programs that communities will support, plus the state's ability to strongly encourage that improvements be made as a continual process of master program revisions and amendment, convinced DOE that a flexible posture and a "meet-them-half-way" policy would in the long run best achieve the objectives of the act. DOE realized that it couldn't expect perfection the first time around.

State administrators of SMA believe that the major conflicts DOE and local governments had over master programs could have been more effectively and amicably resolved if both parties could have presented their cases directly to the Shoreline Hearing Board. If SMA had included this provision, SHB could have acted as arbitrator between the opposing positions and given the negotiation process more rigor and legitimacy.

#### Indicators of achievement

In evaluating the success of Washington's program, there are a number of achievements one can identify. Public participation clearly stands out as the accomplishment most cited by local planners, state officials, and interest groups. The Act, the guidelines and DOE encouragement created a vehicle for public involvement in local planning that was precedent-setting in the state.

This methodology of developing a statewide program *from* the local area viewpoint is a very good one. It afforded the local citizen a chance not only to voice his opinion, but to constructively act on it. It has made more people aware of the value of a unique natural resource and more determined to preserve, protect, and enhance it. It has brought more people closer to the state government, by allowing them to guide a major program to completion in their areas. It has also assured greater compliance with the law, not through fear of punishment, but through understanding of the purpose of the law. And when you have done that--then you have done a good job!<sup>14</sup>

Presumably, participation of local residents and community awareness of coastal management objectives reached a peak during the later stages of master program development and approval by DOE. It would be interesting to determine the extent to which public participation and awareness have fallen off during the relatively routine business of program implementation. SMA may have created an enduring community interest in coastal management in some local governments, a flash in the pan in others.

Although public participation and raising consciousness have been the most conspicuous successes of the SMA, several other achievement indicators have been identified by various actors involved with the Act, as well as two University research studies. Local and state governments now have better data and information on which to make decisions on projects proposing to locate within the shorelines zone. When the Coastal Atlas is produced, the quality and applicability of information should increase by a quantum jump. As an aside, DOE should design the Atlas to monitor coastal development (particularly cumulative impact in coastal systems) as well as to assess development proposals and assist in revising master programs.\*

The Seattle Planning Department has evidence that the permit process and master program development has created view corridors and accessways to the shore that probably would not have occurred without SMA. The chairperson of the Shorelines Hearing Board observed that the Act has increased the percentage of water-dependent uses, reduced the amount of over-water construction, reduced the bulk and intrusion of buildings on the shoreline landscape, and added to the protection of wetlands and dune environments.<sup>15</sup> The reduction in over-water construction and non-water-dependent activities in wet land and subtidal environments was confirmed by the evaluation conducted by McCrea and Feldmann.<sup>16</sup>

A long-term effect of the Act, and perhaps one of the most significant changes it produced, is the alteration in relationships between state agencies and local government and relationships within local government. As in other states, an approved master program can limit state agencies (particularly Parks and Recreation, and State Public Works) from carrying out their own plans and projects. Similarly, on the local level the implementation of master programs has in many cases given the planning office new-found leverage over capital works and parks departments. The effects of these changes in state-local and intra-local authority relationships merit further research in Washington, since other states (i.e., California, Oregon) will be travelling down the same road.

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\* Monitoring, the seventh step in the CPP, is an important element for improving the effectiveness of the process. Most states have put off consideration of monitoring programs until local plans were developed.



NOTES:

1. Jens Sorensen, Robert Goodwin, and Linda Haverfield, "Responses to a Survey of Coastal Counties and Cities in Washington State on the Development, Implementation, and Administration of Master Programs as Mandated by the Shorelines Management Act of 1971." Institute of Urban and Regional Development, University of California, March 1977.
2. Interview with David Cunningham, Planning Director, Jefferson County, August 23, 1976. Interview with Stan Lattin, Director, Grays Harbor, Regional Planning Commission, May 20, 1976. Interview with Dennis Derickson, Senior Planner, Snohomish County, August 26, 1976. Interview with John Keegan, Attorney, King County Prosecutors Office, April 23, 1976.
3. Interview with Ann Sato, Planner, San Juan County, August 24, 1976.
4. Interview with Don Peterson, Director of the Shorelands Management Division, DOE, May 21, 1976.
5. See for example, Thomas Dickert and Jens Sorensen, *Collaborative Land-Use Planning for the Coastal Zone: Volume II Half Moon Bay Case Study*. University of California Sea Grant Publication No. 53. December, 1976.
6. Interview with Dennis Derickson, August 26, 1976. Interview with Rosemary Horwood, Senior Planner, Seattle Department of Community Development, May 19, 1976. Interview with Stan Lattin, May 20, 1976. Interview with David Cunningham, August 23, 1976.
7. Interview with Dennis Derickson, August 26, 1976. Interview with Rosemary Horwood, May 19, 1976.
8. U.S. Office of Coastal Zone Management *State of Washington Coastal Zone Management Program, Final Environmental Impact Statement 1976*, p. 110.
9. Written testimony submitted by Skagit County and San Juan County Planning Departments, Mid-Year Evaluation of the Washington State Coastal Zone Management Program, November 29, 1976.
10. Washington Department of Ecology, Washington State Coastal Zone Management Program.
11. Response by Jefferson County Planning Department to the Master Program Survey.
12. Testimony submitted by Skagit County and San Juan County Planning Departments, November 29, 1976.

13. Response by Whatcom County Planning Department to the Master Program Survey.
14. Response by Cowlitz/Wahkiakum Planning Department to the Master Program Survey.
15. Lecture by Chris Smith, University of Washington Law School, May 19, 1976.
16. Maureen McCrea and Jim Feldmann, *Washington State Shoreline Management: An Interim Assessment* (Program in Social Management of Technology, University of Washington, January 1975). Unpublished.

**NINE FALLACIES OF PLANNING POWER:  
SOME OBSERVATIONS ABOUT THE EMPEROR'S NEW CLOTHES**

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Introduction

Thank you Mr. Chairperson, Members of the audience. Before we enter the gates of fallacy-land, let me identify where I'm coming from with a quote from Gifford Pinchot, Founder and Chief Forester, U.S. Forest Service, whose name adorns one of our national forests:

Conservation of natural resources . . . is the key to the safety and prosperity of the American people, and of all people of the world, for all time to come.

After many years in local and state government, and considerable experience with the academic side of planning, at least sleeping with it, the observations that follow come sadly and reluctantly from one who would like not to have found that they are so. They are my own views, and those of my next-door neighbor who knows absolutely nothing about the subject. Throughout this presentation the word city crops up; please read any city and/or county in these references, as the comments are equally applicable to both types of local government and are generic, not specific.

Actually, there are ten fallacies. Number 10 is in the title of this presentation because the term "planning power" is a contradiction in terms. There really is little impetus to implement most city planning, at least at the local governmental agency level.

The U.S. General Accounting Office has recently recognized this in its study of national land use planning. "Planners and public officials must recognize that transportation, housing, water and sewer, and economic development activities have both direct and secondary land use impacts which need to be considered before such activities are undertaken. Also, once land use plans are developed, they must be implemented and enforced. Without implementation and enforcement, the planning phase is only an exercise in futility," GAO said.

So here's the door of fallacy-land:

*Fallacy No. 1* - That the present Shorelines Management Act can of itself "manage" or conserve the shorelines and that development along the shoreline is regulated for the purpose of protecting existing environmental systems.

Neither the state law nor any of the Master Programs provide a true management program. They are not oriented to the shore and water ecology but to uplands interests. They may be managing the regulations, but they are not managing the shorelines. The limitations of this type of regulation are that you are only regulating a use or an activity that someone else chooses.

Under the Shorelines Management Act you can not force specific uses to move to specific areas; there are nasty names for that. You can not remove inappropriate uses except under limited circumstances where the public health, safety or welfare can be shown to be in imminent danger, or where there is clear violation of the conditions of a permit, and usually not even then. Governmental regulations do not have the flexibility that there might be in long-term property management; and, once a shoreline permit is granted there is virtually no further control (unless your neighbor turns you in).

The sad result of the use of the term shorelines management is that citizens think there really is or can be governmental or public management of the shorelines, and that government is or should be doing more than government actually can do, given the limits of regulatory authority. Zoning is clearly understood by the public to be regulatory and limited in its power, but the ecological public, and even local governmental types, are victims of a misty dream that shorelines are or can be "managed" by governmental regulation, which implies more authority, more power and vastly more know-how than actually exists.

It's like the Emperor's New Clothes. And now to

*Fallacy No. 2* - That decision-making by local government is done in a political vacuum, by professionals reviewing alternatives and making choices based on logical options.

Some citizens, and some academics, think that the process of government decision-making should be a simple matter of assessing the alternatives, choosing the one that makes the most sense, and that is generally agreed on by a large group of decision-makers (who are they anyway?), and going on from there to carry out the chosen alternative in the best grade of concrete and stainless steel.

One problem with the simple neatness of the common-sense goal system is, for whom and for what purposes and whose value system? Another problem is that governmental decision-makers operate under a framework, a web of pre-existing regulations and policies and legal interpretations that

shape all decisions. Still another problem is the tangle of hidden agendas that weave around all public agencies and citizen organizations. whatever their states mandate.

*Fallacy No. 3 - That the overlay zoning concept is a workable method of shoreline management.*

It's like democracy maybe, the worst until you look at the others, but as of now and until we do some extensive fine tuning, it has produced conflicts in regulations that are exceedingly hard to work out and are enormously time consuming for government and the bewildered applicant. In fact, this situation may turn out to constitute cruel and unusual punishment for some of those who want and deserve shoreline permits until we do clean up our act, I mean our Master Program.

The interest cost of the permit processing time and delays has now become a major factor in costing out a project. This overlay zone may have saved us from some awful awfuls, but it also may have lost some development, and certainly has raised hackles. And again, zoning is not management.

*Fallacy No. 4 - That getting the Shoreline Master Program adopted is "winning the war."*

After the agony of getting it adopted and certified, you think you can rest a minute because you've won. Ha! A battle maybe, but not the war. Administering the Program, even given the best motives and dedication to conservation of the shorelines, could lose the meaning of the Act and/or the ordinance very soon, depending on whose interests are paramount at the Mayor/Council level, or how they are perceived at the processing level.

Furthermore, interpretations of an ordinance can vary considerably. Even the two-level approval, with DOE looking over the shoulders of the local agency, while it is by far the best insurance and overseeing of any local land use control legislation to date, still has been known to miss. And then there is . . .

*Fallacy No. 5 - That permittees will comply with the ordinance and the terms of the permit.*

No way. Our Permit No. 1 is in violation, and there's no way to prosecute. So are as many as 20 percent of the others. Some may be technical or unwitting violations, but many are clients of the firm with the "silent piledriver." I doubt if other jurisdictions even have had a chance to check on their permits for violations.

Citizen awareness of this problem is nil/zilch. At the moment, we have some CZM funds for enforcement, but the Building Department can not get enough money to continue to enforce the Shorelines Master Program, nor zoning or sometimes building violations. If we have that problem, so must others.

*Fallacy No. 6* - That we have workable standards based on rigorous analysis of primary data by which to evaluate our shoreline use policies and improve our ability to meet the goals of the Act and our Master Program.

Alas, we are not even too sure what we ought to know, and sometimes some of us are serenely certain that we don't need to know anything more in order to operate. Too often, I hear the question, what do we need to know that for? And, yet, is it good to have a lake that should be re-named Lake Restaurant? Is it good to have one commercial/industrial owner, the Port, own more than 10 percent of all waterfront, and more than one-third of all the commercial/industrial waterfront in the city? What are the ecological effects of the developments we permit? Do our regulations really encourage water-dependent shoreline use? What are the trends in use types, parcel size, ownership? Are these trends good? Good for what? The ecology, or the economy? Either or neither?

From this frustration, on to

*Fallacy No. 7* - That a local Comprehensive Plan is a viable document, and that it is the basis for public and private land use or shoreline decisions.

This concept is inherent in the Shorelines Management Act, but most Comprehensive Plans are basically a record of the status quo with a few flourishes, as is the shoreline map. They are more often quoted than used, and more honored in the breach than used as a basis for any kind of public or private action, with very few exceptions.

Often what we do when we use the Comprehensive Plan and/or zoning principles as our shield is either to fend off "undesirable," in quotes, development, and this is also like the Emperor's New Clothes. More charitably it can be thought of as holding onto the established pattern which has some validity because the Comprehensive Plan does represent a consensus of owners and the body politic as to acceptable land uses for each part of the city.

Whatever it is, the shoreline program environment map is not a projection of the future pattern given normal changes, or what someone thinks it ought to be, but a record of what is.

*Fallacy No. 8* - That a citizen committee can write an ordinance.

Our citizen committee, with its broad range of membership of intelligent, articulate and dedicated people, set forth its policies in a document which they wanted to be held as sacred to the last word, even if it was manifestly impossible to make it work as written. They believed they had done the real work and that the staff job was simply to get it adopted, to jump through a couple of "minor" hoops. We're still jumping through them four years later.

It should be obvious that it's asking too much of such a group to do the technical details of ordinance drafting. It's like doing your own dental work. You know where it hurts and you direct the dentist to that spot, but very few of us pull our own teeth.

But don't get the wrong impression. Input from the citizen is absolutely essential. It's the basic foundation in helping to define public policy and to protect that policy once enacted.

As in Fallacy No. 2, concerned citizens are the best defense of the public interest--the only real defense, in fact. But now we're nearly at the end, with

*Fallacy No. 9* - That is possible to develop brief, simple, easily understood and yet precise regulations for shoreline use in a large metropolitan jurisdiction.

What we want seems so simple, and the goals and policies can be, but seldom are, simply stated. Simple regulations may be possible where there are few owners and no development pressures, or where such pressures could be removed by designation as a sensitive area. But our industrial/commercial shoreline alone has more than 1500 separate pieces of property with 300 different types of uses in 44 miles, 48 percent of the city shoreline. Added complexity comes from the diverse topography of our shorelines. Plus the complication of overlapping and layered legislation.

Furthermore, in urban areas there is very strong pressure for exact limits by developers because they need to know precisely what they can or can not do in developing their properties. If the concerned citizen can't be expected to state his ecological goals in terms of bulk regulations and parts per million, the governmental agency must.

Again, it ought to be easy to state directly the shoreline management ecological goals and have the developer follow them. But how clean is clean? If we made our streams 100 percent clean there would be no food for the fish. Yet an ounce or a deciliter too much pollution and they die. So we are forced to translate goals and policies into dimensions and percentages, tables of uses and special conditions, and still run into exasperating situations where laudable generalities don't make sense.

By now you will have realized that I am here under an alias. My real name is Cassandra. But, lest you believe that, let me say some positive things about the Shorelines Management Act. There really are pluses.

The first positive finding is that it keeps a lot of people like me employed--and lawyers, EIS writers and even some judges.

The second positive finding is the major miracle that the Shorelines Management Act got passed at all. That it is working as well as it does is due to the almost superhuman efforts of all the people who've tried to make the program work--thousands, maybe millions of person hours of work

thought, writing, negotiation, debate and struggle have gone into the Shorelines Act. It's a national model, praised from afar, and we must applaud the labor that brought it into being.

Another positive factor that is impossible to measure but nevertheless real is the number of Roanoke Reefs that didn't get built, and won't get built. For every ugly concrete platform, we have dozens of sites with open water. And maybe it's even good to have one painful sore thumb to remind us of the need for shorelines management.

We must remember that the concept of the Shorelines Management Program is still very young; it took zoning a very long time and much struggle to be recognized as a protection to the public as well as the individual. There's still a large body of property owners, both public and private, whose definition of the public interest approximates that of General Motors. There are many people who want to identify with the, I was going to say pioneer or frontier ethic, but that's not really so: I mean the robber baron ethic, that property ownership confers a divine mandate to use or abuse their property regardless of others.

Yet, to the extent to which private property is subsidized by the public sector, public services, utilities and even the existence of a market for property, there should be a moral obligation not to use property in ways that are contrary to the public interest. But few people really accept that in principle or in action.

So, I believe that in this country we will never have a true shoreline management program until there is recognized public sovereignty over or title to and use of shoreline areas, as in the village commons of the early East Coast settlements. And, until the American public truly understands that the words of Gifford Pinchot are not only for real but have an almost desperate significance today, shorelines management will remain an unsolved problem, a dangerous illusion.

Finally, I've tried to say what the Shorelines Management Program is not and to recognize reality, as well as the progress that has been made. Seeing what the Shorelines Management Act is not gives us a base from which to recognize what it is, and what we would like it to be, so that we can focus our efforts on that.

Fortunately, there is no time here to propose solutions, because there may not be any. At least, there can never be total solutions, just as there is no universal solvent to design a bottle for. I hope it's enough to have raised your consciousness and to try to keep some of you from stubbing your toes on the same rocks where I've stubbed mine.



## LESS THAN FEE-SIMPLE ACQUISITION FOR SHORELINE CONSERVATION

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The Washington State Shoreline Management Act (SMA) expressly authorizes the Department of Ecology and local governments to:

acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder. . . .

RCW 90.50.240.

This statement of authority contemplates purchase of the entire fee-simple or of less than fee-simple ownership. The SMA authorizes purchase in conjunction with other governmental entities, presumably local, state or federal agencies.

There are several limitations on purchase in the SMA itself. First, purchases pursuant to the authority granted in the SMA must be voluntary and cannot be accomplished through the use of eminent domain powers. The original SMA passed in 1971 authorized the use of eminent domain. The Act was amended by the legislature in 1972 to delete reference to eminent domain powers. The importance of this limitation is unclear. Based upon other statutes, counties and cities have the power to acquire property for a public use by eminent domain, e.g., RCW 8.08.010. Where acquisition of a shoreline interest constitutes a public purpose based upon general condemnation powers of counties and cities, a shoreline acquisition by eminent domain would seem possible.

There is a second possible limitation in shoreline management authority for acquisition. Shoreline acquisition is authorized "when necessary" to achieve implementation of master programs. The provisions of most master programs can be accomplished by regulation alone. Acquisition should only be considered where application of the Shoreline Management Act policies or master program provisions would deny reasonable use of a person's property. This would be a rare case. In King County, for example, the Department of Natural Resources and certain timber companies have argued that application of the "natural" environmental designation on their land constitutes a taking of property without compensation. (King County disagrees.) Acquisition would be necessary, of course, where the public wishes to provide active public use in the form of a park or other recreational facility on the shoreline.

I believe that the Washington State Supreme Court will go far in upholding the constitutionality of shoreline master program regulations. In the recent case of Maple Leaf Investors, Inc. v. Department of Ecology, 88 Wn.2d 726 (1977), the court upheld a shoreline-type regulation which denied human dwellings within the floodway of the Cedar River. In Hayes v. Yount, 87 Wn.2d 280 (1976), the court said no question as to the constitutionality of a shoreline permit decision was presented when the applicant was refused permission to fill 93 acres of wetlands in the Snohomish River estuary.

Some persons advocate the use of acquisition as a land use planning control even though regulations to accomplish the same objective could be constitutionally imposed. Zoning is certainly the classic example of a land use control mechanism which has failed to accomplish permanent restrictions on the use of land. Acquisition offers the possibility of more permanent control. Once ownership of the development rights for a piece of property has passed to the public, the pressure for permission for development of that land should subside.

Similar authority for acquisition of valuable shoreline areas is found in the state Current Use Taxation Act, RCW Ch. 84.34. The current use taxation act authorizes the acquisition of "open space land, farm and agricultural land, and timber land" which qualify for current use taxation. The act states:

Any county, city, town, or metropolitan municipal corporation, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, except by eminent domain, the fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land, farm and agricultural land, and timber land as such are defined in chapter 84.34 RCW for public use or enjoyment.

RCW 84.34.210.

Like the SMA, the Current Use Taxation Act does not allow acquisition by eminent domain. Unlike the SMA, the Current Use Taxation Act authorizes a mechanism for funding such acquisition. In RCW 84.34.230 a county is authorized to levy an amount not to exceed six and one-quarter cents per thousand dollars of assessed valuation against the assessed valuation of all taxable property within the county (\$18 billion in King County) in order to acquire such interests in land. "Open space land", as defined in RCW 84.34.020(1), would certainly seem to include many shoreline areas:

'Open space land' means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or etc.

RCW 84.34.020(1).

King County is presently developing an extensive acquisition program for the purchase of development rights on prime agricultural lands within the county. The county is considering acquisition of the development rights for 24,000 - 40,000 acres of agricultural land (at a cost estimated as \$30 million to \$60 million). The mechanism proposed for utilization at the present time would be the provisions of RCW 84.34. Some of these agricultural lands are contained within King County's "shorelines." The program offers the opportunity to try out for the first time a less than fee simple acquisition program on a broad scale.

**1977 AMENDMENTS TO THE STATE ENVIRONMENTAL POLICY ACT:  
A PARTIAL SOLUTION TO PREDICTABILITY**

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On June 5, 1977, Governor Ray signed into law Substitute Senate Bill No. 2654 which amended the Washington State Environmental Policy Act. The bill becomes effective September 21, 1977. The amendments contained in this bill are significant for both the housing industry specifically and the public in general.

History and Background

When the state legislature enacted Senate Bill No. 545 during the First Extraordinary Legislative Session in 1971, there was hardly a murmur of dissent from either side of the aisles in the House and Senate. The bill, entitled "The State Environmental Policy Act of 1971" (SEPA), attracted little notice at the time. It was only one of fourteen bills involving environmental protection and natural resource regulation passed during 1970 and 1971, and many of the others garnered far more attention and debate.

Yet the legislative pebble of SEPA, when dropped into the legal pond, has produced not just ripples but indeed waves of change. SEPA has transformed the approach of local government and the development industry to the entire land use process. Previously, administrative officials reviewed private parties' applications for building permits or grading permits with an eye only to their conformity with zoning and building codes. Now these actions are subject to a lengthy environmental scrutiny, as well, and the application may possibly be denied solely on the basis of the environmental impacts of the proposal.

The result of all this in terms of the public benefit has been a mixed bag. On the credit side, the environmental impact statement ("EIS") requirement mandated by SEPA has finally forced governmental officials to take environmental values into account; these can no longer be brushed aside with a bland statement that "of course we have considered the environment." SEPA requires that the probable impact of an action be carefully analyzed and in specific language, not generalities. Public

participation in the governmental process has been increased as well. On the whole, developers' plans are probably far more environmentally sensitive than they were in pre-SEPA days.

But the picture is not entirely rosy, and the debit side of the SEPA ledger has its entries, too. The prime concerns of the development community are cost, delay, uncertainty, and cynicism. The cost of private projects has skyrocketed because of SEPA. Most municipalities cannot afford to spend the money necessary to do a thorough impact statement, and as a result, the costs for such an EIS are passed on to the developer and then to the consumer. The other chief victim is the taxpayer who is saddled with increased taxes to pay for the larger staff, technical consultants and processing costs necessary for a local government to comply with SEPA. Red tape is expensive and rarely more so than in the field of environmental compliance under SEPA. Then there is the delay. One notable outgrowth of SEPA has been a considerable increase in the time between a project's conception and its execution. No longer can a developer draw up plans, pick up a building permit from the City or County, and begin building, all in a few weeks. Now there is a wait of a year, two years, or even more in cases of environmental litigation, before the first nail is driven. During that time environmental checklists must be answered, environmental assessments written, draft environmental impact statements drawn up, final environmental impact statements prepared, legal notices published, and more often than not, the developer also faces threatened or real court challenges to the entire process.

Additionally, there is the uncertainty inherent in the SEPA process. How detailed must the impact statement be? How long will it take to get drafted, circulated and finalized? Will the project ever get built at all? Successive environmental checklists and statements are not uncommon for the same project. Investment in proposed developments is made reluctantly, without the degree of confidence necessary for stability in the land development process.

Perhaps most critical is the public cynicism that has developed as a result of the administration of SEPA. The decision of whether officials will require an EIS for a particular kind of project is neither predictable nor consistent, even within a single governmental agency. Contents of an EIS are oftentimes unrelated to the real issues involved in the decision-making process. The SEPA procedures are more often than not used solely as a delaying tactic rather than as a method of determining environmental effects and mitigating measures. The result is frustration, distrust and emotionalism which affect not only the land development industry, but attitudes toward public officials, citizen organizations, and the workings of governmental agencies as well.

The history of SEPA in this state is a lesson in legislative processes. The Act itself was modeled after the federal government's National Environmental Policy Act (NEPA). The language of both Acts is more constitutional-sounding than regulatory. Terms are not defined, nor are the

processes for implementation spelled out. In fact, at the time the State Environmental Policy Act was adopted, no one intended it to apply to private projects in the way that the Act has now been interpreted to read; it was thought only public projects fell under the requirements of SEPA. During the first few years of SEPA's implementation, very few governmental agencies complied with the mandates contained in the Act, and certainly no one was prepared to develop impact statements required by the Act.

The mortgage lenders were perhaps the first organized group to realize SEPA's implications. Consequently, many lenders required environmental compliance letters, either from the borrower's attorney or from the governmental agency involved in making any decision concerning a private project. Yet concern among lenders remained, since SEPA in its original form had no statute of limitations which after a certain time would prohibit lawsuits challenging governmental approvals on grounds of non-compliance with the Act. Therefore, efforts were successfully undertaken to amend the State Environmental Policy Act and provide such a time limitation after which litigation could not be commenced. In addition, amendments were proposed and adopted which mandated that guidelines be developed to provide much-needed guidance to governmental agencies in implementing the Act.

These guidelines were finally adopted by the State Council on Environmental Policy in January of 1976. Guidelines, however, are not a SEPA cure-all. They are an administrative interpretation and implementation of the statute, but by themselves they do not have the force and effect of law. The guidelines, therefore, cannot substantively change SEPA or limit its effect unless the limitation is deemed to be consistent with the provisions of the underlying Act.

Partially as a result of the requirement that local governments also adopt guidelines for the implementation of SEPA, more and more people became aware of the complexities and the impact of the Act. However, it is doubtful that any SEPA amendment would have been proposed with any chance of success if it had not been for the Washington State Supreme Court decision in Norway Hill, handed down in July of 1976. That decision received a great deal of publicity in the newspapers and, as a result of an upswing in the economy, directly and immediately affected many land developers who were in the process of platting property in various counties and cities throughout the state. In Norway Hill, the court held that King County's decision not to require an EIS for a 198-lot housing development on 52 acres was clearly erroneous. The court therefore voided King County's approval of the plat. The Supreme Court in Norway Hill went on to state that an environmental impact statement should be required whenever "more than a moderate effect on the quality of the environment" is a reasonable probability. The court gave little weight to King County's decision not to do an impact statement. The County's decision had been relied on by the land developers involved in the Norway Hill project to the extent that they sold lots and constructed substantial improvements. The decision, therefore, not only affected the process by which local governments were making determinations on whether to require

an EIS, but also the business decisions of lenders and title companies, who rely on local governments' determinations in providing financing and title reports. Predictably, Norway Hill unsettled local governments, threw the business and development community into a state of panic, and caused even greater uncertainty about SEPA than before.

Consequently, in the fall of 1976 an ad hoc group of home builders, mortgage bankers, title company officials, and general contractors, was organized to assess what could be done to make SEPA more workable and more predictable. Credit for this initial step and for subsequent progress rests primarily with Brien Stafford, a home builder who had been involved in developing the plat affected by the Norway Hill decision.

The ad hoc group commissioned a study to provide information on the background and history of SEPA and to suggest alternative methods of amending the source of all of this confusion, SEPA itself. The group also agreed to work openly and above-board with any and all interested groups, including the Association of Washington Cities, the Association of Washington Counties, and environmental organizations. The intent was to try and develop a legislative package which would receive support from all interest groups in order to make SEPA more predictable and to reduce time delays and uncertainty. The result of these efforts was the introduction of several legislative proposals in Olympia to amend SEPA, some of which received general support from all interest groups and others of which were strongly opposed by specific interest groups.

The legislative process of drafting technical amendments to a law such as SEPA is fraught with major difficulties. Individual legislators' understanding of the workings of an act such as SEPA is predicated on their own background, the geographical area they represent, and their own individual experiences in dealing with the Act itself. In addition, certain legislators invariably distrust the motives of certain interest groups, and that distrust creeps into any discussion of amendments to an existing law. In the case of the proposed 1977 SEPA amendments, these factors all affected the eventual form taken by the bill. The legislative evolution of these amendments would be an article in itself. Suffice it to say that the amendments were passed only as a result of a great deal of effort by many organizations and individuals and by the hard work of several dedicated legislators.

#### The 1977 Amendments to SEPA

The amendments which the legislature adopted basically alter four aspects of SEPA. First, the statutory time period for filing lawsuits challenging compliance with SEPA has been changed. Second, the public notice process requirement to invoke this statutory time period has been altered. Third, the consequences of publishing this notice and invoking the statutory time period have been clarified, and fourth, the standards and process for denying or conditioning projects based solely on SEPA have been established by the amendments.



1.) The statutory period during which lawsuits must be filed to challenge a governmental action involving a private project for non-compliance with SEPA, has been shortened from 60 days following publication of notice on the same day for two consecutive weeks, to 30 days following publication of notice on the same day for two consecutive weeks. This new time period is more in line with existing statutory time periods for challenging governmental actions.

2.) The public notice process required by the Act to invoke the above statutory time period has been radically altered. The amendments require that notice of the action taken by the governmental agency be published on the same day of each week for two consecutive weeks in a newspaper of general circulation in the area where the project is located and that notice be filed with the Department of Ecology prior to the date of the last newspaper publication. In addition, notice must be given for private projects prior to the date of the last newspaper publication by either (1) mailing a notice to property owners sharing a common boundary line with the property upon which the project is proposed; or (2) posting a notice in a conspicuous manner on the property on which the project is to be built. The option to follow one or the other of the above notice procedures is left to the discretion of the party giving the notice, who will usually be the applicant.

In the case of governmental actions not involving a specific project, perhaps such as a rezone or comprehensive plan change, notice is only required to be published in the newspaper and mailed to the Department of Ecology. Therefore, mailing a notice to adjacent property owners or posting a notice is not required for those actions which are of a "non-project nature."

3.) If the above notice procedure is complied with, its effect on subsequent governmental actions involving the same project is now much clearer under the 1977 amendments.

The amendments now provide that any subsequent governmental action involving the proposal for which notice has been provided cannot be challenged on grounds of non-compliance with certain sections of SEPA unless there has been a substantial change in the proposal between the time of the original governmental action and the new action or unless the new action was identified in an earlier EIS or declaration of non-significance as being one which would require further environmental evaluation.

4.) The 1977 amendments also contain new language clarifying the decision-making process of governmental agencies under SEPA. The 1977 amendments provide that any governmental action may be conditioned or denied pursuant to SEPA only on the basis of specific adverse environmental impacts which are both identified in the environmental document prepared pursuant to SEPA and stated in writing by the responsible official of the acting governmental agency. This amendment also requires counties and cities with populations in excess of 70,000 and 37,000 persons respectively to develop within one year policies for the exercise of the

discretion in denying or conditioning permits. The amendment further requires such policies be contained in adopted ordinances, resolutions or regulations by the governmental agency. For all other counties and cities, such policies must be adopted within three years from the date of the Act. In addition, except for shoreline substantial development permits and shoreline variances, any governmental action which is conditioned or denied, not already involving an appeal to the elected legislative body, shall be appealable to the legislative body of that local government in accordance with procedures which must be established by the local government for such appeals.

#### Analysis of the 1977 Amendments

The 1977 amendments are a step toward solving some of the problems in implementing SEPA. Other steps are needed, and the 1977 amendments in themselves create additional concerns which need to be addressed.

Determining whether to mail notices to adjacent property owners or to post such notices on the subject property will require a case-by-case analysis. No general rule in regard to this choice is possible. The desirability of a specific written notice sent to adjacent property owners versus the posting of a general notice on the property must be evaluated on the basis of knowledge of the general neighborhood in which the property is located, familiarity with the adjacent property, and the particular project which is proposed. If posting is chosen, the length of time during which the notice must be posted is not spelled out, nor is the size or shape of the notice. It is recommended that affidavits of posting be signed at the time of the posting and kept as a record in the event there is a future claim that notice was not given pursuant to the statute.

Determining whether a particular governmental action is of a "non-project nature" will be difficult. The gray area between non-projects and projects will become critical as a result of these amendments, since the notice requirements for a non-project are quite different from the notice requirements for a project. For instance, is a rezoning to accommodate a particular development a governmental action of a non-project nature? Who in fact makes the determination of whether a particular governmental action is of a non-project nature? These issues should be clarified, preferably by general regulations promulgated by the Department of Ecology which will uniformly affect all governmental agencies in the state. In addition, these issues should be clarified at the local governmental level through adoption of implementing ordinances.

The promise offered by the 1977 amendments, to cut off SEPA challenges to subsequent governmental actions involving the same project for which notice has previously been given, is clouded by the specific language contained in the 1977 amendments. As previously discussed, the amendments do not permit a subsequent SEPA challenge to a project after notice has been provided unless there is "a substantial change" in the project. The statute does not provide much guidance in determining what is "a

substantial change." For example, the wording seems to imply that if the proposed project is substantially changed, even though the change would have a beneficial effect upon the environment, the project will require new notice and hence a new period during which non-compliance with SEPA may be litigated.

The 1977 amendments also require special attention to the specific wording of governmental agencies' declarations of non-significance and environmental impact statements. If either the declaration of non-significance (the document declaring that there is no need for an EIS) or the EIS itself identifies future governmental evaluation, then new notices must be provided for those new governmental actions, and a new period of time is invoked during which litigation may be brought to challenge the governmental action for non-compliance with SEPA.

The 1977 amendments recognize that governmental agencies may condition or deny projects based upon SEPA. According to most commentators' review and analysis of court cases interpreting the Act, the authority of governmental agencies to condition or deny projects based solely upon SEPA has existed since SEPA's original enactment. Little thought, however, had been given to how that authority should be implemented by non-elected governmental officials. The new amendments address the issue by providing for the development of policies by local governments for the exercise of that authority. Development of those policies, however, may prove difficult. Because of the very nature of SEPA, environmental analysis is done on a case-by-case approach. Consequently, general policies for the exercise of this discretion may prove worthless if the intent was to provide predictability.

The mandated appeal process required by the 1977 amendments in the event of a non-elected official, such as a building superintendent, conditions or denies a permit, may also prove troublesome. For instance, what if a permit is conditioned but adjoining property owners or a citizens group either desire additional conditions or want the permit denied? Will they now be able to appeal the permit to elected county or city councils? Such an appeal process does not exist at the present time in most municipalities, and the decision of the building superintendent is generally deemed to be final. Thus, while the intent is to provide additional standards and an appeal process to temper the discretion exercisable by non-elected officials, implementation of these standards and the entire process itself may cause more problems than they solve. Regulations are required to be adopted by local legislative bodies to implement the standards and the appeal process. Therefore, interested parties should be involved in the adoption of these standards and processes.

In summary, the 1977 amendments have been a step in the right direction. SEPA procedures have been significantly improved. Consideration, however, should also be given to substantive changes in SEPA. Currently, at the federal level the Council on Environmental Quality (CEQ) is studying changes to the National Environmental Policy Act. That Act is almost identical in wording to SEPA. During the course of public hearings held

by the CEQ in June of 1977, environmental and industrial representatives, state and local governmental officials, scientists, and trade groups, all joined in calling for simplification of the impact statement process mandated by NEPA. That process is identical to the one required by SEPA.

Thus, the same cry for simplification has been and is being heard in this state. What is needed is a continuing cooperative effort by trade, environmental, and business groups affected by the SEPA process to simplify the Act, make it more predictable, and make it more meaningful. The costs associated with SEPA transcend dollars and cents. SEPA at present costs too much time, strength, and patience, as well. The rampant cynicism regarding the SEPA governmental process is particularly unfortunate and needs to be corrected. If all the affected groups work together, the goal of a predictable and useful environmental law will be achieved.

## CHANGES: THE ENVIRONMENTAL POLICY ACT AGAINST THE SYSTEM

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### Summary

The Environmental Policy Act has been criticized for causing costly duplication of effort and delays. This has precipitated many proposals for changes in the Act.

This paper argues that the so-called "problems" with the Environmental Policy Act are problems of interface with the system.

This leaves us with a choice. Either the Act should be changed or the system should be changed. Since the Act has accomplished its purpose, since no one wants to return to the conditions which prevailed prior to the Act, and since the Act is a contributing part of a greater change which cannot be reversed but only confused, the system should be changed and not the Act.

The basic change which must take place is to build a system better using the information produced under the Environmental Policy Act.

The prevailing land management process provides a case in point. The process radically separates planning from decision-making. The Environmental Policy Act has served to inject a process for developing information directly focused on decisions. If the planning process were to be changed so that planning policy was directly applied to the decisions at hand, then planning would function to "organize" the environmental assessment process and thus provide a way to remove the problems associated with the Act.

It has been nearly six years since the State Environmental Policy Act passed out of the State Legislature. In the eyes of its foremost proponent--the Washington Environmental Council--it has been a great success; much more, in fact, than most of us who worked for the bill in the 1972 legislative session really expected.

If other evidence for this statement were not readily available, the character of the bill's critics and their criticisms would serve quite well. The plaintive cries of the land jobbers, contractors and, of late, the timber barons who make up the Board of Regents of this University all attest to the effectiveness of this Act in preserving environmental values.

Though I am not here to defend the Act, let alone the position that the Act is above criticism, I think it is important to make this point.

The Act has been effective in accomplishing its purpose:

It has stopped actions insensitive or inappropriate to the environment for which they were proposed;

More important, it has sensitized decision-makers to the impacts of the proposals they were considering and caused them, in many instances, to refine and improve those proposals before adopting them.

In short, everyone from developers to elected officials has been forced to think more and think differently about proposed actions. This has made a profound change in the way we do things, a change which was sorely needed.

The reason why I emphasize this point is that from the perspective of change, real change, needed change--I think the real problems raised with respect to this law come into focus.

The real problems are not projects or programs being stopped. There is not a project which has been stopped that has not patently deserved to be stopped. Nor is it "costly" delays. Where there have been delays, those delays have resulted in great savings to the environment, to the common good, sometimes even in hard cash.

The real problems are:

- the production of a great deal of information which cannot be used by the system;
- duplication of work;
- making decisions separately and thus producing information and thinking within bounds which are far too limited;
- initiating the environmental assessment work too late in the process to have the most beneficial impact on the conception and early development of the proposed action. Right now, environmental assessments force changes. They should be germinating ideas.

These problems are significant. They should be overcome. But, though they are associated with the Environmental Policy Act, their roots are elsewhere.

The fundamental point about these problems, I think, is that they are due to the fact the Environmental Policy Act contemplated, grew out of, and was part of a far-reaching change, a change in the entire system, which is yet to take place. The old system, still intact, neither can absorb the changes wrought by the Act and the environmental movement nor can it be modified sufficiently to fully accommodate the Act.

If this is so, that we find ourselves now frozen in the middle of change, then I think the only real choices are to go back or to go forward.

It is the nature of this juncture--the question of going back or going forward--which makes the issue with which this paper began so important. It is important to realize the Environmental Policy Act has accomplished a great deal. Despite the problems tied to it, few of us without a vested interest would desire to go back to where we were before. Who wants Los Angeles-like development or an untrammelled highway department?

Moreover, it would take more than changing the Environmental Policy Act to go back. Proposed amendments to the Act--like those before the Legislature in its last session--would indeed gut it. But they could not undo what has already been accomplished. They could not change all that to which the Environmental Policy Act has contributed; most especially, they cannot change the habit of closely scrutinizing major proposals on the basis of hard information. That habit--instilled in both the public and the decision-maker responsible to the public--grows stronger. In fact, it points to the further changes which must take place to finally secure what was started with the Environmental Policy Act.

So what is to be done to resolve the problems mentioned above? What changes can be made in order to provide sufficient direction so that the information now being produced can be better utilized and, in the future, better information can be produced?

These questions can best be answered in the context of land management; both because the major issues concerning environmental policy tend to collect there and because the land management area is representative of the past and present decision-making system.

Traditional land management--still very much with us--separated the functions of planning and implementation; or, put more bluntly, planning and making a decision. The object of land management planning was to produce a product--the plan. The plan related to some more or less distant future that was supposed to be realized by our taking a series of steps. While this was being conceived of, steps or decisions were haply being made in a myriad of instances in light of the present circumstances rather than some future vision. This, in a nutshell, is the plan-on-the-shelf syndrome. The fact is, the more planners emphasized comprehensibility and the future; the more they emphasized the abstract and rationalized world which allows them to piece together their constructs. At the same time, they separated--and continue to separate, I might add--themselves and their plans from the decisions being made on a day to day basis which really affect our policy on the use of the land.

In the halcyon days of the fifties and early sixties, the days of rampant Californication, this was all very fine. Planners did a new plan every three to five years. The plan they had just finished was outdated. Decision-makers, in the meantime, happily granted variances and rezones without a thought to future consequences.

The advent of the Environmental Policy Act--along with the other changes associated with it--has changed this world radically.

What the Environmental Policy Act did was to:

- focus the development of information and an assessment of the future on real land use decisions;
- demonstrate all too conclusively the bankruptcy of planning in a substantive way.

Where planning and plans have become more remote to actual problems and decisions, the environmental and impact statements were immediate to those problems and decisions. In fact, the effect of the Environmental Policy Act has been all too immediate.

If one goes back over the problems ascribed to the Environmental Policy Act, one cannot help but be struck by how much they betray this immediacy, this closeness to particular questions and issues. The basic problem with the apparatus created under the Act is that it isolates problems and issues. Seen in another light, the basic problem we face with the Environmental Policy Act is that it does not operate within the context of a realistic planning system. Individual environmental assessments are done in a vacuum because they do not have good plans to give them direction. Individual environmental impact statements are flat and repetitive because they do not have good plans to give them dimension.

The message is clear. If we are to go forward, we should not concern ourselves with changing the Environmental Policy Act and its attendant system. Rather, we should concern ourselves with changing our land use planning methods. For changes in the land use planning system--or any other planning system--hold out the most promise for resolving the problems of duplication, repetition and useless information. More positively, such changes could lead to a breakthrough in our capacity to produce and use information useful both to making immediate decisions and integrating those decisions one with another so they could truly serve some vision of the future.

The requisite for change is a planning system which focuses its work on present decisions, seeing those decisions as implementing the future.

How could such a system work?

The key elements in such a system would be policy development, policy analysis, problem identification, action assessment and continuing evaluation.

It may seem ironic that a system whose main focus is the decision at hand would be structured on "policy," presently the most abstract aspect of planning. This is precisely the problem. Conventional planning makes "policy" an abstract, idealized concept, for which "the plan" is the single, admissible interpretation. Policy should be, realistically, those concepts which guide present decisions, integrating them, and making them meaningful for the future. This is the understanding of policy embraced by the Environmental Policy Act, an understanding we have not made operational.



To embrace this view requires that policy be linked directly to decisions. This is accomplished by:

- Policy development. Policy is seen as dynamic, growing out of continuing assessment of our values through applying them to decisions at hand and evaluating the results;
- Policy analysis. Understanding decisions as implementing concepts and, thus, analyzing various options to discover what concepts they serve;
- Evaluation. Determining if our decisions are consistent and, thus, have policy. Most important, determining if the policy implicit in our decisions serves our values.

The catch to all of this, of course, is that we must mean what we say or say what we mean. This idea brings us full circle. It could be the only problem with the Environmental Policy Act is that--for too many of us--we really did not mean what we said. And the Act has been effective enough to catch us.

**SESSION B:  
THE MANAGEMENT OF AQUATIC AREAS:  
POLICIES AND GUIDELINES**



## **TIDELAND AND HARBOR AREA LEASING POLICIES**

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The Department of Natural Resources is the largest marine land manager in the State of Washington. The Department is responsible for maintaining, leasing and developing 1,300 miles of first and second class tidelands, 6,700 acres of harbor areas and between 1,500 and 2,000 square miles of bedlands. These lands are a public trust to be managed to produce the greatest long-term public benefit.

We should point out that the public benefit is in contrast to managing for maximum economic return, which is the mandate on trust lands.

Since 1971, state law prohibits the sale of tidelands except to public entities. There are at present approximately 1,900 leases, easements, and material purchase agreements located on or affecting aquatic lands.

The basics of our leasing program on DNR aquatic lands, cover the following guiding principles:

1. Priority is given to water-dependent and water-oriented uses.
2. The statewide public need is considered.
3. Fair market rental payment required when the public use is withdrawn for private consumption.
4. Compliance with Shoreline Master Program, Corps of Engineers Permit and SEPA.
5. Consideration given to adjacent upland owner prior to leasing.

Statutes dictate the lease terms for certain land uses, and land classifications. Beds of navigable waters may be leased for a maximum term of thirty years except for booming and for shellfish propagation; leases for booming may be issued for terms not to exceed ten years. Leases issued for shellfish cultivation are issued for terms of not less than five years, and no more than ten years. In designated harbor areas, the maximum term is thirty years. In general, the statutes permit leases for periods of up to a maximum of fifty years for tidelands and shorelands.

Most leases are issued for terms of ten years, with a preference right to renew by the lessee, if the Commissioner of Public Lands finds that it be in the interest of the public to lease.

The abutting upland owner has a preference right to lease for a period of sixty days after notification of platting of first class tidelands.

Unplatted owners do not have a preference right to lease the abutting second class tidelands.

Beds of navigable waters are leased under a preference right to the owner or lessee of the abutting tide-or shorelands.

In summary, upland owners abutting platted first class tide or shore lands, second class tide-and shorelands, and harbor areas do not have a preference right to lease; however, the Department makes every attempt to notify such upland owners of any application to lease said abutting aquatic lands.

Since the marine waters and underlying lands of Puget Sound and the coastal estuaries are a limited and finite resource, it is necessary that management of these lands allow for multiple use by compatible activities. Permanent and long-term withdrawals for single use purposes should be of limited scope. The plan and management program is designed to provide for the best combination of marine uses that are compatible, yet minimize adverse environmental impacts. Under careful planning and multiple use management, a variety of uses and activities, such as navigation, public use, production of food, minerals and chemicals, and improvement of marine plant and animal habitat, can occur simultaneously or seasonally on Department of Natural Resources' managed land. This concept has incorporated in it the avoidance of permanent single purpose uses on lands that have multiple use potential. In most cases, the concept includes the identification of the primary use of land, but provides for compatible secondary uses.

All leases are issued for rentals based on a percentage of market value. At present, this percentage is fixed at 7.6%. Lease rates can be varied, depending on the degree to which the use interferes with public use of the property.

Of paramount importance in determining use is the statewide interest versus the provincial/or local interest. One of the biggest problems facing our land managers is the local attitude of individuals who object to the use of Puget Sound for any use that may diminish the pristine beauty of the natural water in front of their homes.

Most of the marine land base is to be managed free of surface structures that obstruct the use of the water column and surface; however, certain semi-permanent primary uses that do obstruct surface navigation will be

authorized in certain areas. Lease provisions allow for periodic consideration of renewal and for re-evaluation of compensation to the public for uses that semi-permanently withdraw the surface area.

The management plan for marine lands includes policies and guidelines for:

1. Navigation and commerce
2. Public use
3. Food, mineral and chemical production
4. Protection of the natural marine environment
5. Uses by abutting upland owners, and
6. Revenue production

The policy statements and guidelines apply to all Department of Natural Resources' managed tidelands, harbor areas and beds of navigable waters. They are the primary basis on which the Department's multiple use management plan and programs are developed. These policies apply only to Department of Natural Resources' lands and not other government agencies that administer programs on marine lands.

Policy 1: Navigation and Commerce

To provide for navigation and commerce on tidelands, harbor areas and beds of navigable waters.

Guidelines:

1. Priority consideration shall be given to meeting the expanding need for navigation and commerce on first class tidelands and existing harbor areas.
2. Prior to establishing new harbor areas for deep draft commerce, an up-to-date comprehensive study of national dependence on Washington State to provide for commerce must be completed and a statewide harbor development plan based on national and state needs must be developed.
3. Harbor lines will be adjusted, when justified, to provide reasonable opportunity to meet the future needs of commerce.
4. Water-dependent uses of the tidelands, harbor areas and beds of navigable waters shall be given preference over other uses.
5. Several industries using the same harbor area facility shall be given preference over single industry use.
6. Harbor areas will be reserved for landings, wharves, streets and other conveniences to navigation and commerce; however, where no current constitutional use is practical and other public uses are in demand, interim public use may be authorized.
7. Provisions will be made to minimize interference with surface navigation even though other uses have been allocated.
8. Development of additional sites for navigation and commerce will not generally be authorized on second class tidelands if existing first class tidelands can meet the need.
9. Development, such as floating piers and breakwaters, will be encouraged so as to provide alternatives for increasing capacity for waterborne commerce without imposing environmental costs of establishing new harbor areas and their associated

- dredging and maintenance.
10. Shallow draft uses, such as barge terminals and marinas, will be preferred over deep draft uses in areas requiring extensive maintenance dredging.
  11. Anchorages and harbors of refuge may be allocated to provide protection and moorage space for watercraft.
  12. To provide for public safety, comprehensive mooring buoy locations, lighting and marking plans and programs will be implemented.

Policy 2: Public Use

To provide for the protection and improvement of marine lands for public use.

Guidelines:

1. Selected second class tideland tracts of 1,000 contiguous feet or more or smaller areas of special recreational quality, which have not been withdrawn for governmental or aquacultural uses, will be managed for public use.
2. Whenever practical, leases of first class tidelands will provide for public access to the water.
3. Areas of second class tidelands, designated for public use, will be identified as public use beaches, properly advertised and marked and will be maintained on a regular basis for public use.
4. Areas allocated for public use will not be managed to produce a profit for a concessionaire or the administering agency without a lease fee being charged.
5. Where the State owns the abutting uplands, priority will be given to joint development of the uplands and second class tidelands for public use.
6. Selected second class tidelands will be set aside for development of self-guiding marine nature walks.
7. Selected second class tidelands capable of clam or oyster production, except those designated for aquacultural uses, will be set aside for public use.
8. Provisions shall be made to insure that traditional sports fishing areas are protected from competing uses that create obstructions.
9. Notice will be served to the current lessees of tidelands allocated for future public use, that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.
10. Bedlands abutting upland parks shall be considered for underwater parks.
11. Motorized vehicular travel will not be permitted on Department of Natural Resources' managed public use tidelands.
12. In recognition of the increasing impact on the recreating public on the State's beaches, new programs will be devoted to public education about stewardship of State marine resources.

Policy 3: Food, Mineral and Chemical Production

To provide for the production of food, minerals and chemicals on marine lands with preference given to renewable resource activities.

Guidelines:

1. Tidelands and beds of navigable waters, especially valuable for aquaculture will be so designated and protected from conflicting uses which would limit their utility for this purpose.
2. Information shall be provided to encourage commercial aquacultural activity to expand into proper locations.
3. Provisions shall be made to insure that traditional commercial fishing areas are protected from competing uses that create obstructions.
4. Certain lands will be selected for habitat improvement where such environments can be improved by adding structures.
5. Whenever structures are used for aquaculture on the beds of navigable waters, they shall be located in such a way as to minimize the interference with navigation and fishing and minimize adverse visual impacts.
6. Marine lands will be inventoried as to the location of significant deposits of minerals and aggregates, and a determination made as to the significance and dependence of the State on such deposits.

Policy 4: Protection of the Natural Marine Environment

To protect and enhance the quality of the natural marine environment.

Guidelines:

1. Provisions for leasing tidelands and beds shall include requirements for protecting the natural marine environment.
2. Areas of special educational or scientific interest or areas of special environmental importance may be withdrawn as reserves and protected from competing uses.
3. Provisions shall be made to insure that structures on Department of Natural Resources managed land are properly maintained.
4. Unsightly abandoned structures shall be removed from Department of Natural Resources marine lands, as funds permit.
5. Long term commitments will be avoided when leasing for water-dependent uses which are essential to the economy and public welfare, but have adverse environmental impacts. Leases and permits will not be issued for non-water-dependent uses which have significant environmental impacts.
6. Easements or leases for the development of underwater pipelines and cables will not be granted except where adverse environmental impacts can be shown to be less than the impact of upland alternatives and when granted, will include proper provisions to insure against substantial or irrevocable damage to the environment.
7. Structures and uses on marine lands will be designed to provide for safe passage of migrating animals whose life cycle is dependent on such migration.
8. The use of floating breakwaters shall be encouraged as protective structures rather than using permanent earth and rock fills.
9. Second class tidelands will generally be maintained free of bulkheads.
10. Beach material from tidelands and beds will generally not be used to backfill bulkheads and seawalls.

11. Filling on second class tidelands will generally not be permitted.
12. When material from tidelands and beds is permitted as backfill and when filling on second class tidelands is permitted, provisions to stabilize fill material will be required.
13. Spoil disposal sites will be provided on the beds of navigable waters for certain materials that are approved for such disposal by regulatory agencies.

Policy 5: Uses by Abutting Upland Owners

To provide certain tidelands and bedlands for use by abutting upland owners and to consider certain riparian interests in the management of marine lands.

Guidelines:

1. When tidelands are leased to someone other than the abutting upland owner, such leases will provide for the abutting owner to reach the beds of navigable waters.
2. Second class tidelands not allocated for public use may be made available for lease to the abutting upland owner without providing for public use.
3. In those cases where tidelands are managed for public use, the rights of private upland owners abutting public use tidelands will be recognized by suitable marking of the intervening property lines and properly posting the tidal tract.
4. Anchorage areas on the beds of navigable waters shall be designated for use by upland owners for mooring boats.
5. To reduce the burden on marinas, private mooring buoys and floats associated with shoreline residences will be encouraged.
6. Where there is no interference with normal routes of navigation for watercraft, swim floats and mooring buoys will be authorized on tidelands and bedlands shoreward of the 3-fathom contour or within 500 feet of mean high tide, whichever is appropriate. The placement of floats and buoys beyond the 3-fathom contour or 500 feet will be evaluated on a case by case basis.

Policy 6: Revenue Production

To manage the marine lands under a pricing system which will compensate the public for reduction in the availability of the public lands due to private use and thereby produce revenue to reduce the general tax burden.

Guidelines:

1. The value of department of natural resources managed tidelands and beds of navigable waters to the general public will be recognized by charging competing lessees the full market price for the land.
2. Lease rates may be reduced depending on the degree to which the use interferes with the public use of the same property. Total withdrawal for private use requires a full rental payment.
3. When the effects of marine uses have an identifiable adverse impact on Department of Natural Resources' land, a value will be placed on the loss or impact and charged to the user.



4. Available revenue from leasing of marine lands shall be used for marine land management programs that are of direct benefit to the public.
5. First class tidelands and harbor areas, unless withdrawn by the Commissioner of Public Lands as recreational use property will be managed to produce revenue and service to the public.
6. Lease rates may be reduced for up to five years as an incentive when lessees are involved in research or development work which is in the public interest.

The marine use allocations for Department of Natural Resources lands are public use, aquacultural use, commercial use, reserves, anchorage use, unobstructed multiple use and limited use.

These allocations are designed to establish certain long-term uses of the marine system which reflect the public interest. These lands belong to these citizens. The land use categories were established and allocations made that favor the public's economic and social needs while considering the unique character of Washington's marine lands and waters. There is an increasing demand by the public to use these lands and waters for recreation. The limited nature of shoreline and beach recreation sites, places a priority on developing tidelands for public use.

#### Harbor Area Land Use Management Classifications:

Harbor area land use management classifications are based on the degree to which the use conforms to the intent of the constitutional provision that such areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

##### 1. Water-dependent Commerce

This is a preferred harbor area use classification covering:

- (a) Industries which provide a transportation service to other industries or the general public;
- (b) Industries providing for construction, repair, maintenance, servicing or dismantling watercraft;
- (c) Other aids to navigation which serve more than a single user. Leases may be granted up to 30 years with no restrictions on renewals.

##### Typical Uses:

Public or private terminal and transfer facilities which handle general commerce, ferry and passenger terminals, naval construction and repair facilities, marinas and mooring areas, tug and barge companies

##### 2. Water-oriented Commerce

These are commercial uses which do not service others, but do require water transport, usually of raw materials. Such uses are considered to comply with the harbor area reservation; however, they are considered to be of lower priority and may be asked to yield to water-dependent uses if other suitable harbor area is

not available. Leases may be issued for periods up to 30 years, but contain provisions limiting renewal.

Typical Uses:

Pulp and paper mills, lumber and plywood mills, fish processing plants, sand and gravel companies, petroleum handling and processing plants

3. Other Water-dependent and Water-oriented Uses

These are low priority uses which do not make an important contribution to navigation and commerce for which harbor areas are reserved, but which can be permitted on an interim basis providing that the harbor area involved is not needed, or is not suitable for constitutional uses. Leases may be issued for periods up to 20 years with the provision that they may not be renewed.

Typical Uses:

Public ecological and scientific reserves, public waterfront parks, public use beaches, aquariums available to the public, restaurants available to the public, resorts and convention centers available to the public

4. All Other Uses

Uses which clearly do not conform to the purpose for which harbor areas are created. Uses in this class do not require waterfront locations in order to properly function, nor are they directly associated with a water-dependent use. No new leases to be issued. Re-leases may be issued for periods up to 10 years with restrictive renewal provisions.

Typical Uses:

Apartment houses, hotels, taverns, private residences, warehouses not directly associated with waterborne commerce, retail sales outlets

5. Areas Withdrawn by the Department of Natural Resources

Harbor area which is so located as to be unusable or located where constitutional use would be contrary to the public interest. No leases are issued.

Typical Locations:

Abutting a public use beach, severely exposed locations where development would be an impediment to commerce, consideration shall be given to upland zoning

Special Provisions for Booming and Rafting Leases

1. Unless specifically exempted in writing, all log dumps located on state-owned aquatic lands, or operated in direct association with booming grounds on state-owned aquatic land, must provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.
2. Provision must be made to securely retain all logs, chunks, end trimmings and other wood or bark particles of significant size within the leased area. Lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.
3. Unless permitted in writing, state-owned aquatic land leased for

booming and rafting shall not be used for holding flat rafts except:

- (a) Loads of logs averaging over 24" diameter are not required to be bundled.
  - (b) Raft assembly, disassembly and log sort areas are exempt from bundling requirements.
4. No log raft shall remain on state aquatic lands for more than one year, unless specifically authorized in writing.
  5. The leased area will be available to others for booming and rafting at reasonable charge.

Note: Number 5 is optional. To be used on leases granted to serve the general needs of an area such as an island in San Juan County.

Policy Concerning Unauthorized Use and Occupancy of State-Owned Lands

Upon discovery of an unauthorized use of State land, the responsible party will be immediately notified of his status and if the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within 30 days. If the Law and Department of Natural Resources' management policy will permit the use, the occupant is to be encouraged to lease the premises.

Persons or corporations occupying State-owned lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of State ownership was first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

Policy Regarding Utilization of Public Aquatic Land for Residential (Houseboat) Use

1. No additional publicly owned aquatic land will be made available for use as moorage of houseboats. Space will be allocated for this use on those sites where the practice has been legally established over a long period of time.
2. No houseboat moorage leases will be written for longer periods than 10 years.
3. No houseboat moorage will be leased or re-leased without full compliance with Department of Ecology and Health Department requirements.
4. Suitable emergency power must be available to operate sewage pumps during periods of power outage.
5. Lease rates will be 7% of the full market price of the land involved.
6. The owners of all houseboats currently in trespass will be contacted and either evicted from the public land or brought into full compliance with the law and the terms of this policy within 12 months.

Policy Statement - General Pricing Policy for Aquatic Land Leases

1. All aquatic land lease rates are to be based on market price.
2. Transaction evidence will be considered whenever possible to determine market price. Land sales, negotiated lease rate or public auction lease rates will be given equal credence as transaction evidence.

3. Lease rates will be varied depending on the degree to which the use interferes with public use of the same property. Total withdrawal for private use requires full value payment.
4. When the effects of a use have an adverse impact on State-owned land beyond the area leased, a value shall be placed on the loss which is to be included in the lease rate.
5. Lease rates may include a royalty.
6. Lease rates may be reduced for up to five years as an incentive when lessees are involved in research or development work which is in the public interest.

#### Aquatic Land Public Use Policy

In order to qualify for a public use classification, a use of State-owned aquatic land must

1. Be available daily to the public on a first-come first-served basis and may not be leased to private parties on any more than a day-use basis, and
2. If the general public is charged a use fee in connection with use of the property, the fee cannot exceed the direct operating cost of the facility including reasonable depreciation, and
3. Auditable records must be kept so that the facility manager can adjust the fees accordingly and so the State can effectively inspect the operation for compliance with the deed.

#### Interagency Public Use Management Program for State-owned Shoreland

1. Public use is a primary management objective of the Department of Natural Resources for State-owned aquatic lands on navigable rivers.
2. Improvement of public access to the water and shorelands is an established legislative policy.
3. The Department of Natural Resources cannot finance all needed public access areas. However, the State Game Department has a well developed public access program applying to rivers and lakes.
4. In order to increase public benefit derived from shoreland ownership, it is the declared policy of the Department of Natural Resources to allocate suitable State-owned shorelands and beds for public use and to preserve their utility for this purpose.
5. Shorelands and abutting beds allocated for public use may be assigned to another agency for management without fee provided:
  - (a) Management is consistent with Department of Natural Resources public use definition
  - (b) Proposed managing agency must own or lease the abutting uplands
  - (c) Such use will not interfere with other projected uses

#### Marina and Moorage Design Guidelines

Open moorage will be preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

Covered moorage may be considered in highly developed areas and locations having a commercial environment.

Enclosed moorage will be confined to areas of an industrial character where there is a minimum of esthetic concern.

In general, covered moorage will be preferred to enclosed moorage and open moorage will be preferred to covered moorage.

View encumbrance from enclosed moorage is to be avoided in those areas where views are an important element in the local environment.

Moorage should be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas will be fostered in preference to numerous small marinas widely distributed.

Anchorage suitable for both residential and transient use should be identified in appropriate locations so as to reduce dependence on developed marinas.

Acceptable locations for marina development, properly distributed, should be identified to meet projected public need during the next 30 years.

The use of floating breakwaters shall be encouraged as protective structures rather than using solid fills.

Open moorage: Moorage slips and mooring floats are completely open sides and top.

Covered: Slips and mooring floats are covered by a single roof with no dividing walls.

Enclosed: Completely enclosed roof side and end walls. Boathouse i.e., similar to a car garage.

The Department's policies portray the concerns of today's society. The overall objective is to use these lands, this natural resource to accommodate the water-oriented needs of society in the urban areas while protecting the naturalness of the rural environment, in conjunction with local, state and federal shoreland management principles.

## SHORELINE GUIDELINE REFINEMENT AND MARINE AQUATIC MANAGEMENT

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### Summary

With the initiation of the Shoreline Management Act (SMA) of 1971, the Department of Ecology was given a relatively short 120 days to develop guidelines for the program. Since June 1972, the final guidelines have served as the interim basis for the administration of the permit system and for the development of the local shoreline master programs.

With nearly six years' experience in shoreline management, it has become apparent that there is a need to reexamine certain policies and refine the guidelines based on that experience and the accumulation of a considerable volume of data and information.

One of the major areas targeted for refinement is the management of bedlands and surfaces of the marine waters. Due to the more pressing nature of land use issues and the lack of information and management experience in the aquatic area, the program focused on the land side of the shoreline interface at the expense of the more complex seaward side. The completion of the Coastal Atlas and other marine studies will address this deficiency.

In preparation for guidelines refinement, the department had a consulting firm prepare the Coastal Area Aquatic Management Study which establishes a basic framework and approach for management of Puget Sound and the Straits water area.

To accomplish an update and refinement of the guidelines, the department envisions a lengthy, deliberate process to assure adequate involvement by public agency and interest groups.

### The Need for Refining the Guidelines

Local shoreline management administrators, the Department of Ecology, and others close to shoreline and coastal management acknowledge a need to reexamine the shoreline management guidelines. By this, I am speaking to a reexamination of the policy that has been articulated through the 1972

Final Guidelines for Shoreline Management. The guidelines provided the policy which served as interim basis for the permit system and the policy direction for the preparation of local master programs over the past six years.

The obvious question that comes to mind is: Why change the Guidelines now that they have been generally accepted and that master programs have just been completed? In other words, why reopen the controversy that often characterized the development of the local programs? The basic reason lies in that six years' experience has improved the state of the art and provided an information base with which to improve on the existing program.

Rather than a major shift in policy, the amendment of the guidelines envisions a refinement of the document. We do not foresee change in direction or policy which would immediately lead to wholesale changes in local master programs. The guidelines were general and many of the resultant master programs were likewise general. Thus, the refined guideline policy will, for the most part, go to that next level of detail required to implement more general policy. Moreover, it will take considerable time to accomplish guideline changes through the necessary involvement process and guideline adoption proceedings.

However, I do not want to downplay the possibilities for change or for that matter the opportunities for improvement on an existing program. After all, those guidelines were developed in 1972 within a 120-day time-frame with a staff new to shoreline management. While the guidelines have served their purpose well, the following discussion provides our basic reasons for advocating an update to the guidelines.

The original guideline document is generally outdated. Now that local programs are completed and the permit system has been operational for 6 years, the experience gained has pointed to areas in need of change. In some cases, the guidelines do not reflect what has occurred through the master program development. For example, most local programs found it necessary to add environmental classifications to the basic four that were in the guidelines.

The guidelines did not provide adequate guidance to local governments for managing aquatic areas. As a rule, local shoreline management programs deal adequately with upland coastal areas, but discuss only peripherally the coastal aquatic areas. Where the aquatic area has been addressed, it is usually limited to the intertidal rather than subtidal areas. This results partially from the planning profession's familiarity with land use planning concepts and also on the implied importance of upland areas guidelines for SMA. The aquatic areas were not differentiated from the upland areas in the environmental designations, although several natural systems in the aquatic area were discussed. Management and policy guidance is further complicated by an abundance of legal authority implementing policy and regulations covering the aquatic area, much of which

is incompletely publicized and often controversial. Finally, there is a shortage of nontechnical information about the processes which control the coastal ecosystems, leading to a lack of understanding of the coastal resources.

The information base, which has been lacking, will be dramatically improved for the coastal area through the development of the Coastal Atlas. The data collection phase of local shoreline master programs tends to be less than optimal. By law, local government was charged with conducting a comprehensive shoreline inventory to include general ownership patterns, a survey of the general natural characteristics, and present and projected uses. With the acknowledged deficiencies in the survey of natural characteristics, the department has directed significant time and monies through the coastal zone management program to improve that aspect of the information base. That effort, and other related data activities such as our baseline program, will culminate in our forthcoming Coastal Zone Atlas. The Atlas project has grown out of demand from planners and decision makers at all levels of government and developers in the private sector for a uniform, accurate, and sufficiently detailed data base upon which to make decisions and initiate activities. The Atlas, being designed and prepared by Drs. John Sherman and Carl Youngmann in the Department of Geography, University of Washington, will ultimately include data previously collected, but never presented in a mapped format, as well as data now being collected which has never been available previously. It will emphasize information that has been subjected to some degree of interpretation (as opposed to single geographically distributed data). It will present that information at a map scale sufficiently large (1:24,000) to allow site analysis. Because this and other acquired information relates more closely to the needs of shoreline and coastal management users, it can be anticipated that guideline policies will be more supportable and reflective of accessible information.

Finally, the evolving local/state/federal coastal zone management program requires and provides the resources to carry out refinements in the state guidelines and local master programs. There is a need to examine the program more closely in light of federal coastal zone requirements and regulations and to accommodate federal interest within the program. This is especially significant in the marine aquatic area where the federal establishment plays a significant role.

There is also a relationship between the development of the three new required planning elements in the state coastal zone program and guideline revision. The shorefront access, energy facilities, and erosion element due for submittal to the Office of Coastal Zone Management by October 1, 1978 should be incorporated into the guideline refinement process.



### The Process for Refining the Guidelines

While there is staff level consensus that the guidelines should be refined and updated, the department has not formally initiated the process. At this point, we have neither predetermined how that process should operate, nor what the specific end product should be. The ideal or the goal would be an amended set of guidelines that could be expected to result in corresponding refinement to local master programs. Short of the goal, we see the guideline process and the Aquatic Management Study as providing valuable information and the basis for refinements to individual local and state programs and for state/federal agreements.

In fact, we feel materials developed in the guidelines, including the Aquatic Management Study, to be of some immediate utility prior to formal amendment of the guidelines. The materials could be used as policy basis for certain uses, permits, or actions that are either inadequately addressed or overgeneralized in master programs. This would assume that the materials have more specific or "best available" information on which to base a decision that would not conflict with a master program, but carry out a more vague or less specific policy statement.

Second, the information could be used for "greater than local" or state coastal-wide issues through the Section 10 U.S. Army Corps permit process, or the state coastal zone management positions by the department regarding actions carried out through the federal consistency mechanism. It could form the basis of memorandums of agreement between state and federal agencies and/or among state agencies for policies on management issues.

It could also be used at the "early warning stage" for review comments on a draft EIS, or for purposes of a threshold determination to suggest methods to mitigate environmental impacts to provide conditions for permits on review of projects and plans through the A-95 or A-85 system.

Our initial thinking proposes a process as described here. The process would be initiated by a letter from the director, widely circulated, which would indicate our intent to revise and readopt the guidelines, and that we are soliciting views and opinions on specific areas that should be addressed. Based on the reaction we obtain, and our knowledge of who would be most appropriate and representative, we would establish a broadly based committee to work with. Such a committee would include representation from industry, general public, local, state and federal government, etc. We would work with the committee throughout the amendment process, and they would be asked to review and comment on all work done by us.

Certain uses should be emphasized for guideline development, while others would receive lesser attention. This will be partially established at the offset and can be refined through the process. Priority uses for guideline development could also be based on such factors as: frequency of occurrence, complexity and/or lack of expertise, and intensity or

cumulative impact on the physical environment. For example, complex, one-of-a-kind projects should be studied separately over a longer period of time and would not be a priority in guideline refinement.

An initial charge of the committee might be to look at all areas of possible needs for local master program changes, and make recommendations about what things can be optional with local government and what should be done through guideline amendment.

The guideline development should, to the maximum extent, incorporate existing policies by state and federal resource management agencies. This would give further support to state programs which are not implemented through specific permits, rather than having to rely on other processes, such as the Corps' permit system. It would also make those policies more generally known to users and managers.

The question of aquatic area management is a large one and should perhaps be handled independently of other guidelines, or might be the specific responsibility of a subcommittee of the main committee.

When general consensus of draft guidelines has been developed, we would do some intensive mailings, solicit comments, and hold a series of meetings and hearings throughout the state. Ultimately, the guidelines would be formally adopted as state regulations which would initiate changes in local master programs and could initiate a series of inter-agency agreements with state and federal agencies.

Along with amending the guidelines, there is an optional approach that should be explored. The original SMA guidelines were necessarily general and comprehensive. It is time to concentrate on some of the universally troublesome aspects of shoreline management. Such an approach would bring a great deal of expertise to bear on a limited number of issues, and would provide all levels of government and users with what would essentially be the state of the art or the best information currently available concerning that issue. This approach would provide that five to six specific uses be treated in a detailed manner in "working papers" or monographs with the appropriate guideline portions taken from those papers and amended into and adopted as part of the SMA guidelines. The working papers would not be formalized. They would remain as informational documents only and updated as new information becomes available. As dictated by staff time availability and the emergency of new issues, other uses can be added to the initial set.

For example we might first concentrate on marinas, bulkheads, piers and docks, single-family residences, and landfill. The concentration would be on "uses" because of the immediate relationship to the proposed guidelines work, but we might want to expand the monograph approach to concepts (i.e., water-relatedness) and/or to shoreline resources (salt marshes and estuaries).

This effort would be largely a staff effort, as opposed to the guideline revision work which will depend far more extensively on work with the committee to be established for that purpose. Also, the monograph approach has the advantage in that specific studies can be assigned to specific individuals with expertise and interest in the area.

#### The Coastal Area Aquatic Management Study

In preparation for refinement of the guidelines, the department contracted Corff and Shapiro to do a study for the management of the coastal aquatic area. The study was specifically designed to address marine bedlands and tidelands seaward of the ordinary high-water mark on Puget Sound and the Straits of Juan de Fuca and Georgia. The report's intended purpose was to:

- provide legal and administrative analysis on the complex, overlapping local, state, and federal authorities and programs in the marine water area.
- provide suggested management guidelines, policy, and development criteria for saltwater area management.
- provide a management approach which recognizes existing regulatory and management programs and the marine aquatic resource.

The report, entitled *Manual for Management of the Coastal Aquatic Area*, was completed and submitted to the department in July. We have not made it generally available in order to provide our staff and selected agencies time to complete a critical edit on certain portions prior to its general distribution. While we do not expect to have a consensus on all materials that make up the document, we expect it to be widely used as a source document and want assurance that the material is basically accurate.

The 300-page document recommends a management approach, defines and categorizes 22 aquatic uses, recommends guidelines for those uses, provides legal and administrative information, includes a glossary of terms, describes an aquatic habitat system, and appends the regulations and standards of key state programs. In all, it is an exhaustive piece of work on an impossibly complex subject area that will serve as a framework and source of information around which to build aquatic management guidelines.

Part One describes the management program. This includes a discussion of management areas, shorelines of statewide significance, and water dependency. The section discussing Approaches to Management and Management Areas is a description of several alternative programs, including the advantages and disadvantages of each and a preferred management approach is recommended.

The major recommendation is that management areas be defined based on geographical or natural units rather than political subdivisions. While this immediately brings to mind the often cited failures of regional planning, it should not be shrugged off without serious consideration. At this time, two major regional efforts are working well and could be considered successful. The local, state, and federal agencies have arrived at an estuarine allocation plan for Grays Harbor. The local and federal agencies, and the States of Washington and Oregon are using a similar approach on a plan for the Columbia River Estuary. While the whole of Puget Sound or the Straits may not lend itself to such an approach, certain hydraulic units, such as Hood Canal, Whidbey Basin, Puget Sound south of Tacoma Narrows, and others may.

Within these larger geographical units, the study recommends that "habitats," sometimes referred to as resource capability units, be used as the basis for policy and specific management treatment. This approach would advocate a natural systems management at the individual habitat level rather than the generalized allocated areas approach used in the department's guidelines for the upland shorelines "environments."

A management system based on habitats, in coordination with the program for management of geographic subregions, can provide an effective means for governing the aquatic area. This would require coordination of all the jurisdictions within the subregion and should result in a regional plan for an entire geographic or natural feature. Obviously, this type of plan is dependent on the ability and willingness of involved jurisdictions to subordinate their local master program to a subregional master program.

The study then provides a detailed description of the habitats system written for laymen and general users. This system is designed after the ones used in the baseline studies and other studies undertaken in the marine waters. These descriptions include a discussion of a characteristic flora and fauna, the associated physical and geologic conditions, and the tolerance of these habitats to various environmental impacts. As part of these descriptions, a simplified key to the habitats is presented along with general policies for habitat management. The habitats are based mostly on the substrate material types and associated vegetation. These include rock, mixed-coarse, mixed-fine, clean sand, sand silt or muddy sand, mud, eelgrass beds, saltmarsh, and algae. It also includes a related discussion of the physical, chemical, and geological characteristic and their association to habitats.

Probably the most significant portion of the document, in terms of its contribution to refinement of the guidelines, is the section on Use, Activities, and Guidelines. This section provides policy guidelines for 22 types of uses. It is formulated to provide a definition of the use, its associated uses, use conflicts, impacts and significant concerns, legal and administrative processes involved, and policy guidelines. The uses are grouped according to those primary activities which do not

involve construction, and are primarily resource allocation and management activities (such as shellfish harvesting and sport fishing), and those which require development permits. The focus of guideline refinement would be on those which trigger development permits and the various administrative processes. The policies for the uses are related to the habitats and to their tolerance capabilities.

The appendices to the report include a 45-page summary and analysis of regulations that apply to the aquatic area. This portion was developed by John Lundin, a Seattle attorney, and the Department of Ecology's Assistant Attorneys General. It provides a background of the complex questions of ownership and on the specific state and federal land, water, air and marine animal statutes, and regulations which apply to the aquatic area. A 33-page glossary of commonly used legal, environment, and scientific terminology is appended as well as State Fisheries bulk-head criteria, and DNR's Marine Land Management policy. The final appendices provide the methodology used by the authors in developing the report, the habitat system, and use categories, and a bibliography and references.

## WASHINGTON COASTAL ZONE ATLAS—AN OVERVIEW

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### Summary

The basis for the State of Washington Coastal Zone Management Program is the Shorelines Management Act. Under this act, local governments have the primary responsibility for making land and water use decisions for the shoreline areas and the marine aquatic areas under their jurisdiction. In addition, state agencies, federal agencies, special use districts such as Port Districts, and private enterprises make important decisions that determine the usage of large areas of shoreline. To assist in the decision-making process involved in coastal zone management, the Department of Ecology has contracted for the production of a Coastal Zone Atlas that will provide essential reference data pertaining to the biological and physical features of the state's marine coastline.

### Expression of Need

The Department of Ecology is involved on a daily basis with many aspects of the environment which contribute to coastal zone management. Among these are water and air quality considerations, permit decisions relating to shoreline management, etc. The department is also in constant contact with local, state, and federal agencies concerned with environmental protection as well as individuals and firms from the private sector. A common need perceived by these diverse groups was, and is, the availability of a detailed, accurate, and uniform set of data for certain types of environmental information. The lack of this information has, in numerous instances, hindered effective and expeditious decision-making.

With federal funds granted under the Coastal Zone Management Act, the department contracted for the conduct of various studies designed to fill in some of these data gaps. These studies, which are currently underway, will supply information which is not available anywhere, at present. Although there is substantial environmental information currently available within the state, there are problems in that the scale is not sufficiently detailed to permit adequate site analysis. The Coastal Zone

Atlas that is being produced will not only provide information which is not available elsewhere, but will also provide data which has been subjected to a degree of interpretation (as opposed to simple distributive data) at a scale (1:24,000) which permits relatively detailed single site analysis.

#### Areal Coverage

The coastal zone of Washington State encompasses over 2,300 miles of marine shoreline situated in 15 counties. It is roughly considered to comprise four regions: North Puget Sound--Whatcom, Skagit, San Juan, Island, and Kitsap Counties; South Puget Sound--Snohomish, King, Pierce, Thurston, and Mason Counties; Strait of Juan de Fuca--East Jefferson and Clallam Counties; and the Outer Coast and Columbia River Estuary--Grays Harbor, Pacific, and Wahkiakum Counties. The atlas will cover the entire coastline with the exception of federal and Indian lands.

The critical "first tier" of the coastal zone is a strip of water, beach, and upland defined for the planning and administrative purposes of the State Shoreline Management Act and the National Coastal Zone Management Act. In general, the Coastal Zone Atlas coverage of this strip will extend from a point approximately minus 30 feet below mean sea level shoreward to the mean lower low water line, across the beach to the mean higher high water line and then inland 2,000 feet. The inland limit will be extended where there are significant coastal related features or conditions which might affect the coastal zone. The average width of atlas coverage is approximately 2,400 feet, although it is wider around the extensive marshes in Samish Bay, on the Skagit Flats, in Grays Harbor, and in Willapa Bay.

For the drift sector, coastal flooding, and critical faunal and floral areas studies, the coverage will extend to the jurisdiction of the Shoreline Management Act. For the habitat study, the landward extent will be 2,000 feet from mean high water plus the intertidal area. The landward extent of the geology and slope stability studies will be a variable line, depending on the topographic and areal extent of the geologic unit. In some cases, coverage will extend 200 feet from mean high tide, in other cases, a mile or perhaps even more. The intent is to show coverage of complete geologic units and to avoid fragmentation wherever possible.

The seaward extent of the habitat study will be the mean low tide line, while the critical faunal and floral areas study will, in some cases, extend quite a distance offshore in order to satisfactorily identify critical faunal areas.

#### Atlas Content

The State of Washington Department of Ecology, under funding from Section 306 of the National Coastal Zone Management Act, has contracted for

detailed investigations of basic biological and physical conditions of the coastal zone. The goal of these studies is to provide an information resource for the management of the coastal zone program, including shoreline impact assessment, permit issuance, comprehensive planning, and program revision. Furthermore, the information in map form will provide a general resource for the development of overall policies and guidelines regarding the coastal zone. Explanations of the individual components of the atlas are given below:

#### Coastal Drift Sector Inventory

Drift sectors will be identified, defined, mapped, and described by a private consultant with special expertise in, and knowledge of, coastal dynamics along all the marine shorelines of Skagit, Clallam, Jefferson, San Juan, Island, Snohomish, Pierce, King, Thurston, Mason, and Kitsap Counties. A "drift sector" is a segment of the shoreline along which littoral, alongshore movements of sediments occur at noticeable rates. It allows for uninterrupted movement or drift of beach materials. Each drift sector includes:

- A feed source that supplies the sediment.

- A drift way along which the sediment moves.

- An accretion terminal where the drift material is deposited.

- Boundaries which separate individual sectors from each other.

This atlas presents information relative to beach materials, and sediment types, wave exposure, sources of beach materials, and relative littoral transport. Individual drift sectors along the state's shorelines are also identified.

The intent of this study is to explain the dynamics of littoral drift systems on an individual, local basis; to describe their importance as a constantly active process modifying the shape and form of the marine land-water interface; and to contrast these processes with water-related use activities both from a historic and predictable impact analysis perspective. This will allow locating and implementing developments in those areas where they would be most compatible with existing land characteristics, so that development will cause minimal disruption of natural systems and reduce individual as well as accumulative adverse effects.

#### Coastal Slope Stability Survey

Slope stability will be analyzed, mapped, and described by the Office of the State Geologist of the Department of Natural Resources throughout the marine coastal zone of Whatcom, Skagit, Clallam, Jefferson, San Juan, Island, Snohomish, Pierce, King, Thurston, Mason, and Kitsap



Counties. "Slope stability" is a relative term and refers to the resistance of an inclined or uneven ground surface (i.e., of slope-forming materials) against failure and mass movements in the form of slides, slumps, falls, creeps, rupture, differential settlement, expansion, and contraction, under both natural conditions and man-made impacts.

All the data will be presented in graphic form on maps and through illustrations and in a narrative text which would provide, on a local basis, a detailed description of physical processes causing stability problems and how to use and apply the information displayed. The purpose of this project is to identify unstable or potentially unstable areas, determine the nature of the instability, and explain the cause-effect relationship that would lead to and trigger a hazard, both due to natural causes and man-made impacts. These data will permit avoidance of the most hazardous areas, development of nonconflicting uses compatible with the natural geologic constraints in other locations, employment of a controlled approach of engineering design, and construction in areas where instability is moderate and is amenable to remedial engineering.

#### Coastal Geology Survey

Basic geology will be identified, mapped, and described by the Office of the State Geologist of the Department of Natural Resources for all geologic formations in the marine coastal zone of Whatcom, Skagit, Clallam, Jefferson, San Juan, Island, Snohomish, Pierce, King, Thurston, Mason, and Kitsap Counties. The term "coastal geology" refers to the stratigraphy and lithology of rock materials and their structural relationships, resource potentials, and main engineering properties.

The purpose of this study is to provide basic information utilized in land use planning from which useful data can be extracted for evaluation of geologic hazards and problems and which will furnish a comprehensive basis for interpretive environmental geology. This will assist in avoiding geologic land use conflicts and increase the safety and life expectancy of numerous types of ground-breaking developments.

All data will be displayed in graphic form on maps and through a narrative text, which will provide a detailed description of geologic features and processes and how to interpret and utilize the information.

#### Sand and Gravel Resources

Sand and gravel resources will be mapped and described by the Department of Natural Resources. Active, abandoned, and exhausted operations will be shown in addition to formations where useful material exists. The formations will be shown with a simple assignment for suggesting recoverability of the material.

#### Coastal Flooding Survey

The coastal flooding survey is being conducted by the Department of

Ecology. This survey will be, in effect, a preliminary study with the sole purpose of delineating those areas of the marine shoreline which have been subjected to flooding in the past. No prediction of frequency and potential flooding will be attempted. Where federal flood insurance studies or tsunami predictions have been completed, those studies will be made compatible with the atlas format and shown along with the historical flooding. Due to the fact that substantial development has occurred in the coastal zone, those areas where flooding may have been recorded, but which are no longer problems, will be discussed on a place-by-place basis to explain the past and present status.

The data will then be presented graphically on maps. For areas of known concern, a short textual description will be included. Factors relating to the cause of high water will be discussed as well as protective measures which may have been undertaken to prevent flooding.

This study is not to be construed as the final word on the coastal flooding problem. Rather, it forms a preliminary basis for future flood hazard surveys using computer techniques. It can show where a flood has occurred, but not how frequently this hazard recurs. Prior to the general availability of more refined analysis, the information compiled under this survey should prove extremely useful to decision-makers and planners.

#### Land Use/Land Cover

The Washington Department of Game is under contract with the Department of Ecology to inventory and describe the upland and intertidal habitats in coastal zone counties. Due to late changes in concept, there will be a slight variation in data produced in that for Whatcom and Skagit Counties only land use/land cover will be mapped and discussed, while wildlife habitats will be mapped and described in subsequent volumes.

Upland habitats are associations of plants which occur together due to soil types and moisture content, slope, aspect, and other factors. Associated with these habitats are various birds, mammals, reptiles, and amphibians. Some species occur in only one or two habitats; others range over a number of habitats. Intertidal habitats can be defined on the basis of either the sediment characteristics or the surface macroscopic plants or both. Again, animal species are associated with each habitat type. Many of the upland and intertidal habitat types have sufficiently distinct characteristics so as to permit easy separation.

A classification of habitat types has been developed in this study. It is based on a nationally accepted classification of land use and cover type developed by the U.S. Geological Survey. Using this scheme, the Department of Game's applied scientists are delineating the various classes on color aerial photographs which are at scales of 1:24,000 and 1:6,000.

In addition to an inventory, the Department of Game will provide a description of the characteristic plants and animals which inhabit each habitat. Data will be derived from a review of the literature and field inspections. In addition, the Departments of Ecology and Game will briefly discuss the impacts upon each habitat type from various human activities.

#### Critical Faunal and Floral

A private consulting firm, Mathematical Sciences Northwest, was engaged by the Department of Ecology to describe and map critical faunal areas in Washington's marine waters.

Critical faunal areas for purposes of this study are those geographical locations where certain critical ecological processes occur. Two major processes have been defined. The first and most difficult to document are specific populations which, because of unique oceanographic conditions, provide the major sources of recruitment for adjacent populations. The second criteria for definition of critical areas are breeding, nesting, feeding, and resting areas, as well as nursery area.

The results of the study provide an interim level of understanding of critical areas in Washington, but confirm the lack of suitable data for many species. Besides a concentrated effort to examine unpublished data and interview a wider spectrum of natural scientists, there is a major need to initiate regional field surveys.

Critical floral areas are identified as those known collection sites of rare, endangered, or threatened plant species within the coastal zone. Rare, endangered, or threatened plant species are taken from a modified proposed list compiled at the Smithsonian Institution, D.C., as it applies to Washington State.

As such, this study serves as a cornerstone in the department's scientifically based information system. All those concerned with coastal activities from developer through public official usually do not intentionally wish to cause an impact to a species whose existence may be of direct concern to them. These data should therefore prove extremely useful to most user groups.

#### Format

After discussion with local, state, and federal officials regarding the coverage, scope, and utility of the Coastal Zone Atlas, the following conclusions were reached. They provide the basic constraints to be met in designing the atlas graphically and for creating a plan for its execution.

#### Scale

The atlas should be reproduced at a scale of 1:24,000. Planners and the

general public are familiar with the U.S.G.S. 7-1/2 minute quadrangle maps published at this scale. From a graphic point of view, since the data have been collected at this scale, a slightly smaller scale representation might provide the sharpest delineation of the information. However, a smaller scale, such as 1:36,000, would not allow the use of these data with revisions of the U.S.G.S. quadrangles as they become available.

It is felt that the atlas should be no larger than can be easily opened and used on a standard size office desk. The binding should allow the simple extraction of individual pages for use in more detailed studies and presentations, or incorporation of revised or newly produced sets of maps at some later date.

#### Color

Original plans called for the publication of the Coastal Zone Atlas in black and white. Such a form would prove to be a severe limitation for two reasons. First, there is a large number of categories of data to be represented for two of the more important maps in the atlas, namely, basic geology and wildlife habitats. Graphically in black and white, it would not be possible to create anything more than an areal table of information for these two data items. Second, it is felt that the atlas must convey the message of its information in the strongest possible graphic terms. This is required not only to ease the task of the professionals who must use the atlas on a day-to-day basis, but also for the general public who will be referring to it to answer their own questions. Therefore, a multicolor presentation of the information appears to be absolutely essential. Local planners have expressed the opinion that any other presentation would be just about useless to them.

#### Organization

The sheet layouts in the atlas should be designed in light of the kinds of interests that will be brought to bear on the atlas information. It is assumed that the sheets will be grouped by counties. The sheets in each county will be arranged so as to give the best representation possible of areas with some ecological affinity, such as bays, estuaries, harbors, and spits. Generally, efforts should be made to orient the sheets so that a constant north-orientation is maintained between sheets. This factor is not as important, however, as keeping associated ecological features together.

#### Update and Maintenance

Some method should be available for keeping the information contained in the atlas up to date. When sufficient new information is available, either new individual sheets of the atlas should be published or complete new volumes released.

### Design Alternatives

On the basis of the analysis contained under FORMAT, it was determined that a printed document at a scale of 1:24,000 on sheets of approximately quadrangle size in a loose-leaf binding would be the best form for the atlas. Several options were available for creating such an atlas, including the option of not printing the atlas, but distributing the information in some other manner. The various production options examined were: (1) manual production of a four-color atlas; (2) manual production of a black and white atlas; and (3) automated production of a four-color atlas. The Department of Ecology has contracted with the University of Washington to produce the Coastal Zone Atlas.

After considerable deliberation, the third plan for producing the atlas, automated production of a four-color atlas, was selected. Although this plan is not the least expensive option, it provides the greatest flexibility in the execution of the atlas and the largest residual value for the expenditure. It preserves the ability to develop the information center plan at a later date. Concurrence in this decision was reached with the representatives of federal agencies (Army Corps of Engineers, Bureau of Land Management, Fish and Wildlife Service, and the Geological Survey), other state departments (Departments of Game and Natural Resources), and local officials (chiefly local coastal zone planners, as a group through the Puget Sound Planners' meetings, and with individual planners in Snohomish, Skagit, Whatcom, and San Juan Counties).

### Proposed Atlas Execution Procedure

The Coastal Zone Atlas is to be compiled and executed using an automated computer cartographics procedure developed for the presentation of areally-arrayed environmental information. These techniques have become widely used in the preparation of environmental impact statements and the development of comprehensive land use plans.

#### Phase One--Base Map Preparation

The coastal zone of Washington is represented on approximately 140 U.S.G.S. quadrangle maps. According to the sheet layout criteria of constant scale, ecological units and north-orientation, the 15 coastal zone counties can be divided into 195 coastal units for representing all data sets on 437 atlas pages. The quadrangle maps provide a standard base with uniform content and high familiarity that can be copied and used as a reference for coastal zone data. Geographic reference schemes (G.L.O., latitude and longitude, U.T.M., and Washington State Plane) and toponymy that are useful for spatial reference are shown as well as the basic physical features. The quadrangle maps are to be mosaicked into the coastal units. These mosaics will be copied and reproduced in the atlas at a 40 percent screen value as the base on which the data will be presented.

#### Phase Two--Digitizing

The information compiled by the contractors in the form of overlays registered to the U.S.G.S. bases will be converted into a computer-compatible form through the process of digitizing. By this procedure geographic features are delineated and coordinates are derived which describe their spatial extent. The digitizing method to be used is called Integrated Terrain Unit Mapping. Under this technique, the data from each of the contractors are combined on one master data overlay. Common boundaries are identified and registration between adjacent coastal zones will be maintained. All of the data overlays will be registered to the Universal Transverse Mercator plane coordinate system and the digitizing process will yield geographic coordinates in that form.

#### Phase Three--Computer-Assisted Plate Production and Typography

The multicolor representations of the data will be achieved by creating four different printing plates. One plate is prepared for printing in each of the three primary pigment colors (cyan, magenta and yellow, and black). The combinations of colors in different screened values produce the various colors.

Color separation plates for the atlas are prepared manually through the use of an interactive graphics type computer terminal. Atlas pages are designed, modified and finalized through a cartographer's interaction with the computer and visual display console. Automated data are organized into segment and page files; computer programs read the digitized segment and page data and plots are made for the creation of each color plate. These plots present all information necessary for cartographers to manually produce open window masks of each color separation plate or type and special feature plate. The process used to make open window masks is known as peelcote stripping.

Each atlas page will contain type identifying the area and data categories as well as presenting miscellaneous annotation, plus type for identifying specific data items. Each sheet of the atlas will require individual attention to determine the layout of the information as well as the position of the type. The cartographer will be aided in the placement of the type for the data categories by computer-generated plots of the data designations and their relative locations.

#### Phase Four--Editorial Supervision

Upon the completion of the four previous phases, a cartographic editor will examine the materials for each page of the atlas to check the consistency of the information. The editor will have all of the materials used in the compilation of the given page and will be responsible for seeing that the atlas is as correct as possible.

#### Phase Five--Printing

The atlas is to be printed by offset photolithography using a two- or four-unit, sheet-fed printing press. The pages will be ganged two-up and printed on one side of a 28- by 35-inch sheet of 70 lb. substance semi-translucent paper. This allows an image size of 17 by 23-1/2 inches for an areal coverage at a scale of 1:24,000 of 34,000 by 47,000 feet. The black printer will contain the type, linear symbolism, and black data areas, and the cyan, magenta and yellow printers will hold area and linear features to be printed in color. Cost estimates are based on production of 500 copies of each page, plus a 12 percent overrun of 60 pages for wastage.

#### Phase Six--Binding

The 25- by 38-inch sheet will be cut in half and trimmed 1/4 inch on all sides leaving a 1-1/2 inch gutter for binding. Five 1/4-inch holes will be drilled 5/8 inch from the left-hand side of the pages for binding with Chicago screws. The pages including a master legend page will be collated by counties and bound between 200 lb. card stock covers similarly drilled and tape reinforced. Approximately 200 copies will be bound for each county. The remaining 300 copies for each county will be collated with two to three other counties and bound as regional volumes. Some wastage sheets will be available for single sheet distribution. More sheets could be made available by increasing the quantity of the production run.

#### Software Installation and Manipulation

The computer software to be used in the atlas production will be installed at the University of Washington Computer Center. This location was chosen because of its central location and because the necessary hardware is already in place. The easy access will facilitate use of the software for site suitability analysis and other manipulative functions by various user groups.

A contract will be drawn up between the University and the Department of Ecology specifying that any agency or firm may have access to the computer to complete these manipulative functions at cost to the user. Therefore, the department will pay for installation, the University for maintenance, and users for computer time.

Once the software is installed, it is a simple matter to update or add to the atlas. The only costs involved, beyond data gathering, are digitizing, plate production, and printing. All information contained in the automated files is automatically integrated with the new data, with the result that the atlas remains current and complete at a relatively small expense compared to the cost of manually producing a new atlas. It is envisioned that the manipulative and updating capabilities of this atlas will gain in importance over time.

#### Cost Reimbursement

The department intends to provide copies of the atlas, at no cost, to local, state, and federal agencies with coastal zone interests, as well as to the state library system.

For consulting firms, industrial groups, etc., the atlas will be provided for a fee.

Because the atlas is intended to be a working document and because the price per copy would be extremely high based on the total costs of production (including data gathering efforts), it is our intention to subsidize the sale to private parties. The purchase price has not yet been set, but will reflect a pricing agreement between NOAA and the Department of Ecology before any copies are issued.



## ENVIRONMENTAL IMPACTS OF DREDGING IN ESTUARIES

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### Summary

Dredging is an important activity in the coastal zone in relation to the environmental quality of an estuary. Primary impacts are numerous and include habitat disruption, alteration of geotechnical and chemical sediment properties, animal kills, change in circulation patterns, and release of chemicals and sediment to the water column. Secondary impacts include those associated with increased industrialization and development of the estuary. Two manuals have been developed at Oregon State University to assist the public and governmental agencies in the review of environmental statements of dredging projects in estuaries. These manuals give specific requirements for adequate assessment of both primary and secondary impacts which allows critical public review as specified under the National Environmental Policy Act.

### Purpose

The National Environmental Policy Act (NEPA) establishes continuing environmental responsibilities for agencies of the Federal Government. These agencies are required to "improve and coordinate Federal plans, functions, programs and resources" to fulfill these responsibilities. NEPA specifically requires the preparation of environmental impact statements (EIS's) for dredging operations which require Federal action.<sup>2</sup>

Two manuals have been prepared to assist in this action which are entitled Dredging in Estuaries: Guides Manual<sup>3</sup> and Dredging in Estuaries: Technical Manual.<sup>4</sup> The primary purpose of these manuals is to provide guidance for the review of EIS's which have been prepared in accordance with the NEPA for dredging actions in estuaries. Before outlining the format of the material presented in these manuals, it seems appropriate to first examine some of the fundamental concerns of the NEPA *vis à vis* the preparation of an EIS for dredging in estuaries.

### NEPA and CEQ Guidelines

General guidelines for the preparation of EIS's have been set forth by the Council on Environmental Quality (CEQ). In addition, federal, state, and local agencies have also issued guidelines for the preparation of EIS's. Since many of these guidelines set forth the procedural requirements of these individual agencies it was not necessary to prepare manuals for the review of EIS which detailed all of the existing agency guidelines. However, it was necessary to provide review guidelines which would lead to a thorough and critical examination of whether the provisions of NEPA and CEQ guidelines have been met. Consequently, the scope of these manuals has been restricted to review for compliance with the intent of NEPA and the CEQ guidelines.

It is important to note that EIS's which have been prepared under NEPA should reflect the efforts of federal agencies to meet the broader environmental responsibilities stated in NEPA. Thus, impact assessment and statements should not only relate to procedural requirements of the CEQ guidelines, but also to activities and documents which demonstrate how "Federal plans, functions, programs and resources" are being improved and coordinated to fulfill the intent of the NEPA. From this view, environmental impact statements (and the documents, policies and techniques upon which they are based) are more than descriptions of environmental impacts; they are documents which, through their wide circulation and review within society, expose the proposed actions of federal agencies to critical and constructive review and, in so doing, help to insure that their efforts conform to the intent of NEPA.

### The Role of Reviewers

The role of EIS reviewers is an essential element within the environmental impact assessment process and within the broader social process of environmental management. As a group, EIS reviewers have the following desirable characteristics which differ from those of individuals who usually prepare any particular impact statement:

- (1) they represent a wide range of different interests, attitudes, abilities, and approaches, and
- (2) they are not necessarily constrained by any single set of institutional guidelines or procedures.

Because of these characteristics, reviewers as a group may provide important checks and balances. In this system of checks and balances, they may challenge procedures imposed on the EIS process through agency policies; they may raise new issues and concerns; and they may expose continuing conflicts as seen from a range of perspectives. These characteristics and checks and balances are considered to be desirable, and thus these manuals do not attempt to "standardize" the EIS review process or to supplant existing agency guidelines. It is believed that

the diverse interests, approaches, attitudes, commitments, backgrounds, and constraints of reviewers are important and even essential aspects of the EIS review process.

Reviewers, however, often suffer from the following deficiencies:

- (1) they have very little time to review impact statements, and
- (2) they have limited resources with which to gather the environmental and technical information which is essential to the review process.

These manuals seek to minimize these deficiencies without destroying the desirable characteristics previously mentioned. The material seeks to expose reviewers to a number of environmental concerns. They attempt to provide a number of general suggestions; to describe some fundamental environmental processes and systems; and to identify a variety of techniques and approaches and to provide source material for a wide range of environmental concerns. In summary, these manuals attempt to provide guidance which is intended to increase the efficiency and effectiveness of reviewers by complementing the reviewers' diverse abilities. In the final analysis, of course, reviewers must state their own case as they themselves best see it by drawing upon all of their resources.

#### Confronting Massive Technical Information

Often reviewers are confronted with massive amounts of environmental data and technical information which they may find extremely difficult to evaluate in terms of its adequacy and relevancy to the NEPA. We cannot provide a simple step by step procedure for this difficult task; however, we may offer some general suggestions. To begin, the following assumptions are offered:

- (1) most technical material and environmental data should be in the EIS for specific reasons, and
- (2) the principal reason for presenting environmental data and technical information is to assess a potential impact.

Based upon these assumptions the reviewer should ask the following: what potential impact do these environmental data and technical information seek to assess? If the answer to this question is not clearly described within the impact statement, then the reviewer certainly has grounds for criticizing the EIS. If the potential impact may be identified, then, reviewers need to assess this impact within their own capabilities. If the reviewers are qualified and if they perceive the identified potential impact to be significant, they may seek to determine if the environmental data and technical information properly assess this impact. The "Technical Manual" may offer the reviewer some assistance

in this task. If the reviewers of EIS's feel that the potential impact is not significant, they may either ignore the environmental data and technical material presented in the EIS or criticize the impact statement for wasted effort in collecting and analyzing irrelevant data. If the potential impact seems significant, but the reviewer does not feel capable of assessing the technical information, they may:

- (1) move on to another topic,
- (2) affirm the significance of the potential impact, but avoid evaluation of the impact on the environment, or
- (3) request a qualified person to review the technical material.

#### Assessing the Adequacy of the Questions Addressed

One of the most difficult tasks of a reviewer is to determine if the correct environmental questions have been asked in an EIS. This is a very important task because the adequacy of the environmental data and technical information depends upon the relevancy of the questions the information seeks to address. Reviewers will have to prepare themselves for this task; the following approach is suggested:

- (1) *Identify a number of possible and significant impacts.* Those who review many impact statements should maintain a reference notebook which contains brief descriptions of possible impacts. These commonly encountered impacts may be treated as starting hypotheses in the EIS review. A number of these impacts are identified within these manuals.
- (2) *Identify the most likely conditions for the impact to occur.* The possible impacts may be related to certain types of conditions. These "most likely to occur" conditions need to be compared to the conditions of the proposed project described by the EIS under review. This comparison may enable the reviewer to select which of the possible and significant impacts should be addressed in the EIS.
- (3) *Identify the techniques and approaches which may be used to assess the significance and likelihood of each possible impact.* There will usually be some techniques or approaches for assessing each possible impact. By knowing these (at least in a general way), EIS's may be reviewed to see if information has been collected which is relevant to the more likely possible impacts. If such information is not present, a basis exists for criticizing the EIS. If the information is there, then a review in greater depth may be appropriate.

### Assessing the Significance of Impacts

Usually, the easiest impacts to identify as being significant are those which have a direct economic measurement. NEPA, however, specifically seeks to go beyond mere "economic and technical consideration." Reviews of EIS's offer additional important and critical inputs to the decision-making process by describing and identifying important impacts which may not have been considered. There are no fixed rules for identifying the significances of many impacts. The following, however, are offered as very general guidelines:

- (1) An impact which is chronic (long term) may be more significant than an impact which is acute (short term).
- (2) An impact which is widespread is more significant than a comparable impact which is contained in a small area.
- (3) An impact which affects biota or habitats which are rare is more significant than an impact on something which may be ecologically common or replenishable.
- (4) A possible impact which is harder to correct is more significant than a comparable impact which is easier to correct.
- (5) A possible impact which would be difficult to identify in an early, more correctable stage is more significant than a comparable impact which could be more easily identified in a similar stage.

### Assessing the Importance of Impacts

The following equation expresses one way of assessing the relative importance of different impacts:

$$I = P \times S$$

where: I = the relative importance of an impact, S = significance of the impact and P = the probability (odds) of the significant impact occurring.

Very seldom are actual numbers available to "plug in" to the above equation. The informed judgment of an EIS reviewer, however, may be considered as a means to express order of magnitude importance of the concept expressed by this equation. Thus, the term, P, may be considered to be the assessment of the likelihood of occurrence (how likely is the impact), and S is an informed assessment of the significance of the impact occurrence.

The importance of this concept is this: one does not have to necessarily prove beyond a reasonable doubt (P near 1) that a significant impact will occur in order for it to be an important consideration (high value of I). If it is believed that a possible impact has less than a 50% probability of occurring, then the impact may still be a very important consideration if the value of its significance is very high. The review of impacts should not be limited to those impacts which are relatively certain to occur. Significant impacts (particularly long term impacts which often involve secondary effects) which could occur (P not equal to zero, but very low) should also be considered. Similarly, the inability through either lack of environmental data or technical information to assign values to P or to S should not be interpreted as "no impact" but, rather, as "impact unknowns".

#### Broader Considerations

There are some limitations to the above approach which need to be considered. The approach assumes that the significant impacts may be identified as possibilities, yet too often unforeseen impacts often occur as a result of multiple causes. In these instances, an environmental strategy is needed which is based upon the acknowledgement that we are unable to foresee all impacts as possibilities and that some of these impacts may be very significant. Under such a strategy<sup>5</sup>, one should attempt to:

- (1) avoid large scale irreversible changes,
- (2) preserve variety and options,
- (3) monitor changes so that actions may be changed or corrected as soon as serious adverse impacts are noted, and
- (4) confine potential widespread environmental impacts.

#### Organizational Structure

*Guides Manual.* This manual is divided into two major sections as directed in the CEQ guidelines:<sup>6</sup> the environmental setting without the project, and probable impacts of the project. Within each one of these sections, information is presented under physical, biological and human sub-sections

*Technical Manual.* The technical manual may be used as a primary reference source for the Guides Manual. The same format has been adopted as in the Guides Manual and detailed technical information relevant to the material in the "Guides Manual" has been presented. Both manuals may be obtained from the Engineering Experiment Station, Oregon State University.

### Bibliography

- (1) The National Environmental Policy Act, PL 91-190, 42 U.S.C. 4321, Sec. 101 (b).
- (2) The National Environmental Policy Act, PL 91-190, 42 U.S.C. 4321, Sec. 102 (2) (c).
- (3) "Dredging in Estuaries: Guides Manual," Oregon State University, 89 pp., 1977.
- (4) "Dredging in Estuaries: Technical Manual," Oregon State University, 313 pp., 1977.
- (5) Bella, D.A. and W.S. Overton, "Environmental Planning and Ecological Possibilities," J. of Sanitary Eng. Div., ASCE, 93, SA3, 579-592, 1972.
- (6) The Federal Register (*loc. cit.*) Sec. 1500.8(a)(1).

## MARINA SITING AND DESIGN

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### Summary

Technological innovations in small craft moorage, storage and launch facilities can be encouraged in order to relieve some of the pressures on the state's coastal zone. Dry storage, backshore marinas and the provision of more public and private boat launch facilities could help to accomplish this. It is suggested that the measurement and projection of demand for new facilities take into account behavioral aspects of waterbased recreational activities. An examination of other state's coastal management programs treatment of marine recreation facilities suggests alternatives which may be explored in refining Washington's program. Finally, three alternative approaches to addressing the unresolved issues of moorage facilities siting and design are suggested.

A new marina being developed with private capital will open next year near Everett providing recreational boaters with space for 1400 small craft. The U.S. Fish and Wildlife Service, reviewing the draft environmental impact statement for the project commented:

The proposal is a less environmentally damaging solution to the enormous recreational boating demand in Puget Sound than many we have reviewed.<sup>1</sup>

The Service had no adverse comments to make and the project was approved in 225 days. This is in sharp contrast to many other marina proposals where delays of 2 years have been encountered, due largely to federal agency objections. The reason? No permanent wet moorage will be provided at the site. The entire facility, with the exception of launching ramps and temporary vessel tie-up docks, is located upland. Boats, stored in covered stalls, or on open ground in special cradles, will be launched at predetermined times by forklift truck or a bridge crane capable of handling craft up to 100 feet in length.



Further north, at Point Roberts, a 900 boat marina is taking shape whose only encroachment on the natural shoreline is an entrance channel with protective jetties and a breakwater. In this case, the entire basin has been dredged in formerly dry pasture land. In spite of Fisheries Department guidelines to the contrary, developers of this backshore marina were able to demonstrate that a single entrance (or breach) would provide adequate internal mixing and water exchange with the Strait of de Fuca.

In neither case will the developments preempt water surface or waterbottom space to the exclusion of other navigational, recreational, or natural habitat uses. As the more obviously suitable saltwater sites for marinas in Puget Sound become scarcer and pressures from other shoreland uses increase, technological innovations such as dry storage and backshore marinas become attractive and acceptable alternatives.

#### The Demand for Moorage in Puget Sound

Numerous feasibility and marketing studies<sup>2</sup> reinforce the commonly held observation that demand for small craft moorage in Puget Sound far outstrips supply, and that boaters favor a saltwater location for their vessels. Industry observers note that provision of moorage space is the ultimate constraint on boat sales and, by extrapolation, on the entire manufacturing, sales and service components of the recreational boating industry. Yet it might be erroneous to assume that these and other constraints, such as a shortage of investment capital, artificially deflated moorage rates and the costs of the regulatory process, impose intolerable burdens on the recreator household.

Important findings from sociological studies of recreational behavior suggest that the type of outdoor recreation is less important than the social setting in which recreation takes place. That is, by concentrating attention on what gives the recreator satisfaction it is apparent that physical settings and varied recreational activities are substitutable.

Knowing how people organize themselves to play maybe more important than knowing the activities in which they participate.<sup>3</sup>

Activities may be interchangeable depending on who participates with whom . . . the basis for participation in any recreational activity may be linked to the social bonds generated by a particular set of people. That is, for people who have gathered together, several activities in a variety of leisure settings may provide equal

opportunity to achieve the participation desired by the group.<sup>4</sup>

For example, family outings may involve a variety of interchangeable or substitutable activities depending on season, weather, proximity to recreational opportunities and so on. However, to the boating family with investment tied up in boat, motor, skis, or fishing gear there are compelling reasons, not facing the non-boat-owning family, to engage in boating activities. Without a more complete understanding of the sociological dimensions of marine recreation the meaning of demand for moorage space,

measured by waiting lists at marinas and by household surveys, is incomplete. But, even given such incomplete understanding of recreational behavior, gross statistics indicating expanded participation in water-based recreation activities requires institutional response.

- How do we accommodate increasing numbers of boats and boaters and at the same time avoid lining the shorelines and filling every sheltered embayment with wet moorage slips?
- Should this decision be left to local government?
- How can uncertainty and consequent delays in permitting new facilities be lessened?
- What role might the legislature or state agencies play?

#### Marina Siting and Design in Coastal Management Programs

An examination of policies developed in other states might be instructive. California's Coastal Act, for example, encourages increased recreational use of its coastal waters by "developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors . . . providing new harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas and in areas dredged from dry land."<sup>5</sup>

Severe restrictions are placed on the use of dredged wetlands for boating facilities, though degraded wetlands may be restored and up to 25% of the restored area used for boating facilities.<sup>6</sup> When natural wetlands are permitted to be used for such facilities, mitigation is required, either through dedication or restoration of an equivalent area, or an in lieu payment to an appropriate public agency,<sup>7</sup> for example the state parks agency.

In Massachusetts' proposed coastal management program highest priority for expenditure of state recreational funds is given to public boat ramps. Restrictions are placed on expenditures for dredging new moorage facilities except where a region-wide boating public is to be serviced, or where conflicts between recreational boating and commercial fishing can be resolved in no other way.<sup>8</sup>

Hawaii's proposed coastal management program does not specifically address marinas, but calls for a consolidation of agencies responsibility for outdoor recreation activities, coordinated state/county recreational planning for acquisition, construction and management of recreational facilities, a vigorous acquisition program, an increase in user fees to cover, at a minimum, operating and maintenance costs, and, finally, establishment of water quality parameters for coastal recreation.<sup>9</sup>

Illinois proposes technical and financial assistance to improve the number and capacity of recreational boating harbors, marinas and harbors-of-refuge. Cooperative arrangements among government agencies with recreational responsibilities are proposed.<sup>10</sup>

Oregon's approach to marine recreational facilities is similar to Washington's: the state's coastal areas are categorized under estuarine, coastal shorelands, beaches and dunes, and ocean resource units. *Estuarine* areas are to be subdivided further into management units comparable to Washington's "environmental designations." Among "preservation," "conservation" and "development" management units only in "development" units are marinas considered a permissible use.<sup>11</sup> A further requirement is imposed stipulating that "alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered."<sup>12</sup> Mitigation of effects of dredging and filling in estuaries, by restoration or creation of new wetlands is required.<sup>13</sup>

In coastal shorelands marinas are a permitted use in "water-dependent" and "water-related" use areas and may be permitted on a case-by-case basis in "conservation" areas.<sup>14</sup> Marina sites in protected areas subject to scouring, which would require little dredging, are encouraged.<sup>15</sup> Marinas are not encouraged in *beach and dunes* resource units, but may be permitted on a case-by-case basis where conditions are appropriate.<sup>16</sup>

Summarizing, then, from a cursory examination of other states' programs there are mechanisms we can identify which may be of interest to those formulating policies and guidelines for marine recreation facilities.

- The integration of marine recreational planning into the states CMP
- Tying capital budgeting to recreational planning
- Zoning shorelands for specific marine recreation uses
- Encouraging alternatives to the proliferation of wet moorage, particularly wet moorage over state-owned waterbottoms e.g. dry stack moorage, launch ramps and backshore marinas
- Requiring mitigation where fragile coastal wetlands are dredged or filled in conjunction with a small harbor development

#### Marina Siting and Design in Washington State

Washington's CMP deals with marinas in two ways: first, state guidelines for local master programs address marina siting and design questions.<sup>17</sup> But, despite these guidelines, significant variations in local master

programs' treatment of marinas are evident.<sup>18</sup> Second, through the SMA and SEPA, DOE and other agencies review specific marina proposals for consistency with local governments' master programs and identify significant adverse effects on the environment. Planning and siting of marinas still remain the prerogative of local government. However, the state can influence the location and size of marinas in various other ways. For example, the Department of Natural Resource's leasing policies, leasing rates and lease terms could be used to discourage inappropriately located or designed facilities. Further, the Interagency Committee on Outdoor Recreation (IAC), which dispenses federal Bureau of Outdoor Recreation (BOR) and state marine gas tax funds to local governments for public recreational facility construction and land acquisition can influence public sector investment decisions. Finally, sanctions can be imposed subtly by state resource agencies objecting to particular projects during EIS review--sanctions likely to be reinforced by federal reviewing agencies during Corps of Engineer's section 10 or 404 review. Yet these measures are essentially reactive in nature and do not represent an affirmative approach to siting and design of marine recreation facilities. Developers, both public and private, face continued uncertainty of project approval, permit delays and associated costs due to inflation and lost engineering fees.

#### Alternatives for Upgrading Marina Siting and Design in Washington State

Three broad alternatives are open to the state: first, the development of more refined and stringent policies and guidelines for siting and design of new or expanded moorage facilities; second, the development of a state coastal siting plan for new facilities; and finally the provision of state funds and technical assistance to local governments conducting their own siting and design studies. These three alternatives are not mutually exclusive.

##### Revised guidelines

The state could develop more refined and stringent policies and guidelines for the siting and design of new or expanded moorage facilities, paying particular attention to shoreline and nearshore physical processes--flushing, circulation and mixing of waters in embayments and artificial harbors--congestion of water surface and conflicts with other navigation, including commercial fish grounds. Such guidelines should be developed with the involvement of all state natural resource planning and regulatory agencies such that duplicative or conflicting guidelines would be avoided.

The development of policies and guidelines could be achieved in several ways:

- By legislative resolution instructing the Oceanographic Commission of Washington to undertake studies and make recommendations.
- By executive order to the state's Natural Resources Board and agency directors for creation of a multi-agency task force to address the problem.

- An in-house or contracted DOE study under the oversight of the Ecological Commission

Each approach has inherent strengths and weaknesses: implementation of recommendations from the Oceanographic Commission would require either further legislative action or executive concurrence--a risk-strewn alternative at best. The advantages of such an approach would be the probable provision of funding adequate for the task and the neutral, non-regulatory setting of the Oceanographic Institute of Washington.

An executive order authorizing the Natural Resources Board<sup>19</sup> to study the problem and make recommendations has the advantage of involving simultaneously the principal regulatory and state landlord agency for marine lands management. Consequently, implementation of findings through coordinated state authorities would be enhanced.

The third alternative involving an in-house or contracted DOE study could be funded easily through existing CZMA section 306<sup>20</sup> sources and would be conducted with the background of long experience of that department in dealing with state/local government relations. Its principal disadvantage would occur in implementation: an agency in the executive branch would have difficulty influencing policy decisions in other powerful state agencies run by elected public officials.

#### State coastal siting plan

The experience gained by the Grays Harbor and Columbia River estuaries studies and management plans in geographically specific regions could be applied, coastwide, to the management of specific uses. Involving all affected federal, state, and local agencies and special districts (e.g. public port authorities) a special task force could review existing facilities and projected demand for new facilities at a county or sub-county level. Within the existing framework of local master programs, specific areas could be nominated as suitable, conditionally suitable, or unsuitable for marina siting. With federal and state agency concurrence on these designated areas, permit applications could be processed speedily for conforming projects and primary attention be given to detailed design considerations.

#### Local government planning with state funds and technical assistance

Local government could be encouraged to conduct their own siting studies with funds and technical assistance provided by the state through CZMA section 306 funds, but within stringent and detailed statewide guidelines. Federal and state agencies would again be consulted before final recommendations were made and every effort would be taken to bind those agencies to the emergent plans.<sup>21</sup>

Given the political context within which shorelines management has been accomplished, the third alternative would appear to be the most palatable

and feasible since it most closely parallels the now familiar experience of local governments developing master programs. This appears to be the approach favored by the DOE.

Each of these three approaches to better managing the siting and design of marine recreational facilities and measures to implement them warrant attention and discussion.

#### FOOTNOTES

<sup>1</sup> Snohomish County Planning Department, "Final Environmental Impact Statement for a Dryland Marina Storage Facility," Everett, WA., 1977.

<sup>2</sup> See, for example: Kramer, Chin and Mayo, "Seacrest Marina Programmatic Feasibility Study," Seattle, 1977.

<sup>3</sup> Field, D.R. and Joseph T. O'Leary, "Social Groups as a Basis for Assessing Participation in Selected Boater Activities," Journal of Leisure Research, 1973, No. 5, p 17.

<sup>4</sup> O'Leary, Joseph T., D.R. Field and G. Schreuder, "Social Groups and Boater Activity Clusters: An Exploration of Interchangeability and Substitution, In: Water and Community Development: Social and Economic Perspectives, Field, D.R. et al., Eds. Ann Arbor, 1974.

<sup>5</sup> California Coastal Act. Section 30224

<sup>6</sup> Ibid. Section 30233 (a)(3)

<sup>7</sup> Ibid. Section 30607.1

<sup>8</sup> The Commonwealth of Massachusetts, Massachusetts Coastal Zone Management Program, Vol. I, Boston, 1977, p 178-9.

<sup>9</sup> State of Hawaii Department of Planning and Economic Development, Hawaii Coastal Zone Management Program Second-Year Summary Report: 1975-1976, Honolulu, 1976, p 24-25.

<sup>10</sup> Illinois Department of Transportation, Division of Water Resources, Illinois Coastal Zone Management Program Preliminary Draft, November 1976, p 42-44.

<sup>11</sup> Oregon Land Conservation and Development Commission, "Coastal Planning Goals and Guidelines, Draft No. 3," June 1976 p 7.

<sup>12</sup> Ibid. p 5

<sup>13</sup> Ibid. p 4

<sup>14</sup> Ibid. p 11

<sup>15</sup> Ibid. p 10

<sup>16</sup> Ibid. p 13

<sup>17</sup> Washington Administrative Code 173-16-060(5).

<sup>18</sup> Washington State Coastal Zone Management Program, January 1976, Vol. 2, Appendix A, pp. A9-A45. See also, Goodwin, Robert F., "Shorelines Management and Marine Recreation Industry," In: Recreation '76, Conference Proceedings, Division of Marine Resources, University of Washington, 1976, p 65.

<sup>19</sup> The Natural Resources Board also sits as the State Harborlines Commission and is therefore familiar and sensitive to marine commerce needs and issues.

<sup>20</sup> Such a study was proposed in the state's 1978 Coastal Zone Management Section 306 work program, but was subsequently deleted when funding levels were reduced.

<sup>21</sup> The City of Tacoma's experience is instructive here: during development of their Master Program the city involved federal resource agencies (particularly the Fish and Wildlife Service). An agreement was reached on the appropriateness of the City Waterway for marina development. Permits for such uses have been handled expeditiously, while in the nearby Hylebos Waterway, where such an agreement is not in force, two developments are in litigation and suffering serious delays.

## ESTUARY MANAGEMENT: PROBLEMS AND CONCEPTS

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### Summary

Estuaries are composed of social, biological, physical, and legal factors combining to form an overall system. Management of these systems requires a major departure from standard upland planning processes. An estuary management program is only successful if implemented. The key to implementation lies with the people who own and who regulate the use of the estuary. The management program must be responsive to the social, legal, economic, and resource realities unique to that estuary. The major management objective is a plan forged by the users and the regulators into an operational strategy that ensures the continuing use of the assets of the estuary through time.

### Introduction

Estuaries are problems and getting their act together is a national priority. We have all commiserated about our attempts to manage resources or develop needed programs and projects in estuaries and our inability to do so--the lack of a data base for decision-making, the inability of government to provide consistent decisions or information, time delays, governmental interference, private industry's disregard for natural resources, and on and on. In simple terms, people are running into each other out there and they don't like it.

These problems are being compounded in the future by an ever-increasing demand for space and resources. The increasing demands and decreasing supply create conflicts between user groups and the governmental bodies who are mandated to maintain a resource supply to serve the user groups. The description of that problem is not a new or startling revelation. It is a fact we have known for years. What is more sobering is that we can no longer afford the luxury of simply being aware that the problem exists and knowing what it is composed of.

In the early development of the Northwest, it was commonplace to cut Douglas fir and burn it simply to clear the land. At that early time in the development of our country, pioneers could afford to do it. Today, no one can afford to do that to the land and survive.



The use, abuse, and development of our estuaries have reached that point. We can no longer afford to waste resources. We must get the estuary's act together or lose either the estuary as a viable system or a part of our society that depends upon that estuary.

Any management program or estuary plan must address the entire system and the immediately adjacent uplands. It must be comprehensive in the physical and biological factors it addresses, as well as the social, legal, and political factors it considers. It cannot be successfully developed by any single agency or entity as each has a restriction upon its power as well as a bias of viewpoint. It must both be responsive to the management needs (short-term) and the planning needs (long-term) of the estuarine system.

Rather than discuss specific strategies involved in developing an estuary management plan, I would like to talk about the concepts behind any strategies that govern the progression and development of the overall estuary management plan. I must apologize for the fact that these concepts are not too earth-shattering, and are not based upon any great work or theory. The concepts are drawn from successes and failures of two projects, the Lower Willamette River Management Plan and the Grays Harbor Estuary Management Plan.

The Lower Willamette River Management Plan addressed the lower 17 miles of the Willamette River in Oregon. This portion of the river flows through the metropolitan Portland area and is heavily urbanized and industrialized. Grays Harbor estuary is on the coast of Washington approximately 50 miles north of the Columbia River. Grays Harbor estuary covers 90 square miles. Without going into a great deal of detail about either of these programs, it should be noted that although physically the systems are radically different, the demands and conflicts between resources and user groups, frustrations of property owners, development interests and local governments were very similar in both cases. A point of interest relating to the process and concepts behind these plans--they seem to work. The Lower Willamette River Management Plan was adopted by all agencies and governmental bodies in late 1973. The program has been operational solving people's problems without major conflict for more than three years and has undergone a scheduled review with no major modifications recommended.

#### Problem

Earlier in the discussion I mentioned some of the problems involved in estuary management/planning. Let's look at some of the elements behind those problems. First, an estuarine system is not just mud and water; it is a composite of social, biological, physical, economic, and legal components. Estuaries are dynamic physical systems; for example, the average ebb tide flow from Grays Harbor to the ocean is 620,00 cfs (roughly equivalent to the Columbia River at flood stage). The water flowing into Grays Harbor comes from a drainage basin covering approximately 2,520 square miles. The diurnal tidal range at Aberdeen is 10.1 feet, with an extreme tidal range of 18.1 feet. Approximately two-thirds of Grays Harbor's surface area is exposed at each low tide. Simply stated, there are tremendous physical forces involved.

Other factors are the fisheries which represent international concerns, and vegetation and marshland that support wildlife and fisheries resources. Navigation and maintenance of transportation routes are often needed to serve international markets.

Estuaries also support people, people who live, work, regulate, recreate, and study about estuaries. These people also have rights and depend upon the estuary and its resources. These rights have in some instances been guaranteed by treaty and constitution. The demands by people, conflicting rights, and strong physical and biological limitations create conflicts. In fact, there are few areas more controversial than estuaries. In areas of controversy where people have strong feelings, they tend to choose sides and break into various camps representing their opinions. This situation describes the current social and political mood surrounding many estuaries today.

The physical, biological, and political elements of an estuarine system are only one portion of the problem. Another portion is the regulatory system that controls activities and uses within the estuary. These are local governments, resource agencies, environmental agencies, and industry. (It should be noted that resource agencies and environmental agencies' interests are not necessarily the same thing.) State and federal regulatory agencies have developed discreet systems and policy in relation to estuaries. Each local government has its own planning and zoning concepts and laws which impact estuary use and development.

Estuaries represent large blocks of publicly owned land. Often the entire bed and much of the bank (up to ordinary high water) is owned by the public. The water and water-dependent natural resources are publicly owned. The estuary itself is a navigable waterway open and free to navigation and fishery. Public trust rights are guaranteed by constitution.

A variety of public and private groups have vested interests in the estuaries and create demands upon government. These interests often have sharp philosophical differences and time horizons. The resource and environmental agencies tend to view actions and impacts through infinity, considering resource production or loss in perpetuity. Industry and development interests often view impacts and opportunities with a more limited time horizon, relating more to the amortization of an investment. Why is this important? The difference in time horizons causes a language problem between the regulator and the regulated and demands that both management concerns as well as planning be addressed simultaneously.

I believe I have described one general concept: AN ESTUARY MANAGEMENT PLAN IS A DIFFERENT PROBLEM THAN THE CLASSIC LAND USE PLANNING PROCESS.

### Concepts

As I discussed earlier, the concepts behind development of an estuary management plan are far from earth-shattering. They are not even complicated. If we can accept the conclusion that estuarine management is different from traditional upland planning, I would like to advance a series of concepts saving the first and major concept for last.

*Concept: management and planning is only successful if implemented--*Any program which will be ultimately successful must begin its strategy and design with implementation as a goal. Thus, such items as data collection, public involvement, workshops, rough drafts, plan adoptions, etc. all become steps toward the ultimate goal of implementation and not goals themselves. This is more than semantics. Too often groups working on a management program have lost momentum and become satisfied with the completion of a rough draft report.

*Concept: the people who own, use, or regulate uses of the estuary are the major keys to the implementation of the program--*These are the people that the program will affect the most, and also the people who often have the greatest amount of up-to-date information about the estuary. The collection of basic information must not just consider these people, but involve them in an active sense. The process of collecting factual information, separating the real from the imaginary on all facets of the estuary is an important element in implementing the management program.

The process of bringing this information together must involve all interest groups; landowners, environmental interests, Chambers of Commerce, industry, resource agencies, local governments, etc. The full spectrum of interests must be involved. It is amazing how much detailed data these individuals possess. For example, we have often received some of our best information from commercial fishermen. They may not put it down on official forms, but the information is firsthand, up-to-date, and accurate.

The process of gathering information must recognize the various backgrounds and perspectives of the various groups, and *go to them to get their information*. Seek them out and collect the information at their convenience.

It must be recognized also that the local governments and the resource agencies have, in addition to their data input, an obligation to follow through and live with the program that is developed. Their concerns and constraints must be part of the data base brought to the planning process. It often becomes one of the realities to be dealt with in the final stages of forming a management plan. One of the keys to the accurate and rapid development of a sound data base is the active participation by the various interest groups, owners, users, and regulators in the collection and verification of the information.

*Concept: the people who are left behind to administrate the plan must be the people that put together the draft of the plan--*practical tuning of a proposed management plan to the realities of governmental structure and eventual development of a workable program lie with people either knowledgeable in, or responsible for, the administration of the program. These people, provided with the detailed data base from the data collection phase of the study, become the initial decision-makers. These people must be involved in the development of the management plan and be a part of the compromises made to achieve a working draft of the plan.

*Concept: the consultant is simply the person or group that develops the proper format and organization of the program--*The consultant is the expeditor of the process, at times an arbitrator, and always a crowd control element, but never

the sole developer of a plan, even in its rough draft stages. The use of a consultant as a "third party" is often the only way to accumulate data and facilitate the decision process, but the assemblage of the plan lies with the people who must administer it.

*Note:* We have been talking about the development of the rough draft of the management plan rather than the final draft of the plan. It is common for everyone to want to be a part of the giving and taking that takes place in the development of a plan. It is impractical or impossible to develop a draft management plan in any reasonable time frame if all parties are part of all decisions. That does not mean that individuals or interest groups are in any way excluded. It means that their input has been solicited and recorded during data collection, and again in the review of the rough draft. The rough draft, however, is put together with a limited number of people with legal responsibilities for management of the estuary.

*Concept: broad review of the draft*--A broad review is achieved simply by taking it to the people. It is never adequate to simply advertise that the rough draft is available for review. You must actually take it to the people who are affected, through special meetings, mailings, information brochures, or other means. The key to broad review is to make the management plan easily accessible and understandable to the people who are interested in it. Responses from all interested parties must be obtained so that the final draft may consider and either answer or incorporate their concerns into the final document. The most important concern is the one that is never heard, or heard and never addressed. If you question this, I urge you to contact the Canadian government regarding the Foothills gas pipeline proposal or your local school board regarding bond elections.

#### Summary

Before presenting the final concept I would like to recap my thoughts to this point. The estuarine system does not fit the classic concepts generally applied to upland planning because it has some unique and dynamic biophysical, social, and political characteristics. The estuarine system provides the basic foundation for many natural resources. It is a highway, a major thoroughfare, it is an area that people have historically used as a disposal area.

With these dynamic elements present, decisions must not be based on political or social desires alone. Hard, factual data on resources, physical system, and environmental factors that drive and govern the functions of the system must be considered in all decisions. Policy or "sacred cows," whether held by interest groups or agencies, may have to be modified to fit reality. The generalities and broad policy statements, whether derived from 50 or 5,000 miles away, have to be tailored to the unique set of characteristics of each estuary. It must be recognized that you are planning in the middle of a freeway.

If an estuary management plan differs from the classic land use plan, what is the component that makes it different? The prime difference relates to the host of public resources, major public ownership, public trust rights, and dynamic physical environment which are characteristic of estuarine systems. The agencies responsible for the environmental and resource concerns within an estuary must have the day-to-day ability to ensure the long-term future of the resources that they are charged by law

to administrate. This need is reflected in their use standards, in their use restrictions, activity controls, and development guidelines. Each agency has developed regulations and management strategies to administrate their responsibilities. This simply stated is management--not planning.

Local government, development interests, special interest groups, and the general public need to have a direction to follow. They need to know what they can realistically expect to have happen, where to prepare for expansion and growth. They also need to know the probable impacts of development activities, and where they can and cannot occur. The program developed must also fit within the general framework of local government and agencies' existing administrative structures and rules, and present some predictability regarding use. This simply stated is planning--not management.

Scrutiny and predictability through time are planning concerns with a long-term perspective. Management is control of day-to-day use and is immediate in perspective. An estuary management plan must embody both concepts as a part of its overall objective. This leads to both the first and final concept governing an effective estuarine management program: THE BLENDING OF A MANAGEMENT PROGRAM AND A PLANNING PLAN INTO A MANAGEMENT PLAN, FORGED BY THE USERS AND THE REGULATORS, INTO AN OPERATIONAL STRATEGY, SHARING AND MANAGING THE ASSETS OF THE ESTUARY THROUGH TIME, SUPERVISED BY REALITY AND REVIEWED ON A REGULAR BASIS TO ENSURE THAT IT HAS KEPT PACE WITH CHANGING TECHNOLOGY AND SOCIETY.

## COASTAL ZONE PLANNING IN THE COLUMBIA RIVER ESTUARY

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### Summary

The Columbia River Estuary Study Taskforce (CREST) is the bi-state, local government agency charged with formulating a comprehensive estuary plan for the Lower Columbia River area. While CREST does not conduct any field research, it does assist state and federal agencies in planning research and in communicating this research to local governments. This paper considers the procedural and political mechanisms by which land and water use decisions are made during the planning process, the attitudes and interests of the participants and regulatory agencies and the prospects for implementation. The overriding question is whether the planning process will actually result in wise resource management.

The Columbia River Estuary Study Taskforce (CREST) is the local, bi-state organization charged with implementation of coastal zone planning in the Lower Columbia River. CREST consists of ten local governments in Oregon and Washington: Clatsop County, the Cities of Astoria and Warrenton, the Town of Hammond and the Port of Astoria in Oregon, and Pacific and Wahkiakum Counties, the City of Cathlamet, the Town of Ilwaco and the Port of Ilwaco in Washington.

Unlike Coastal Zone Management Programs in many areas, CREST was not formed simply to meet the demands of the Shorelines Management Act. CREST was formed primarily in response to local interest in research and the urgent need for a mechanism to resolve land and water use problems. It is fair to say that perceptions among citizens and local officials of what CREST should be, were and are, highly variable. To the diverse local interests must be added the ownership, regulatory and development interests of the forty-two state and federal agencies comprising CREST's Technical Advisory Committee. The CREST program has been a delicate balancing act amidst numerous public and private interests.

We are dealing with a two-fold dilemma: the first aspect is that, as much as we want to implement a resource-based plan, we must also implement a politically realistic one. A plan must be acceptable to the community, or it will be honored in the breach rather than the observance. Local government must feel it is their plan.

This forces the planner to use what I call the "economic argument" as a lowest common denominator - that is the other half of the dilemma. What is the "economic argument in planning?" The "economic argument" is that an estuary (or other resource) should be preserved because the long-term resource production so gained will be more valuable than the development opportunities lost. I suspect this is often incorrect, or at least not demonstrably true. When you make this argument, you give up too many resources for which economic value cannot be demonstrated - why indeed is economics the proper yardstick? I submit that value judgments are an extremely important (but controversial) part of the planning and management processes. It is a serious mistake to avoid value judgments by resorting to the "economic argument." Over-reliance on the economic argument has, for example, warped the entire research program in the Columbia River - we know a great deal about salmon, but very little about the rest of the system, which produces salmon, because salmon is the economic resource. Nonetheless, CREST is frequently forced, as are most planning organizations, to resort to the economic argument.

Having pontificated a little on the planners' predicament, let me briefly explain the CREST program, and then, since recitation of a work program is in itself of little value, let me discuss the attitudes of the participants in the planning process.

THE CREST Program. The CREST program consists of three basic elements: the Information System, the Management Program, and Current Projects Coordination. The Information System consists of the Library, a collection of some 300 items; the Inventory, a synthesis of the physical, biological and cultural characteristics of the estuary (currently in press); information products, or short publications in specific areas of public concern; and research program design and coordination. An early decision was made that CREST could not itself conduct research or contract for research to be done. This was not possible with the small staff and short amount of time available. Nonetheless, we have helped coordinate research conducted by other agencies on a routine basis. In addition, CREST helped formulate the Original Columbia River Estuary Special Study Proposal, a projected five-year, multi-million dollar effort, that will be coordinated by the Pacific Northwest River Basins Commission.

The CREST Management Program is outlined in Figure 1. Goals were established and Uses, Conflicts and Problems identified. A citizen committee then established Regional Policies to help implement the Goals and to guide formulation of the Land and Water Use Plan. The staff combined the Oregon Coastal Goals and the Washington Shoreline Management Master Program to obtain a Land and Water Use Classification System that includes NATURAL, RURAL, CONSERVATION AND DEVELOPMENT classifications of Waters,

Figure 1

CREST PLANNING PROCESS  
(CONCEPTUAL FLOW DIAGRAM)

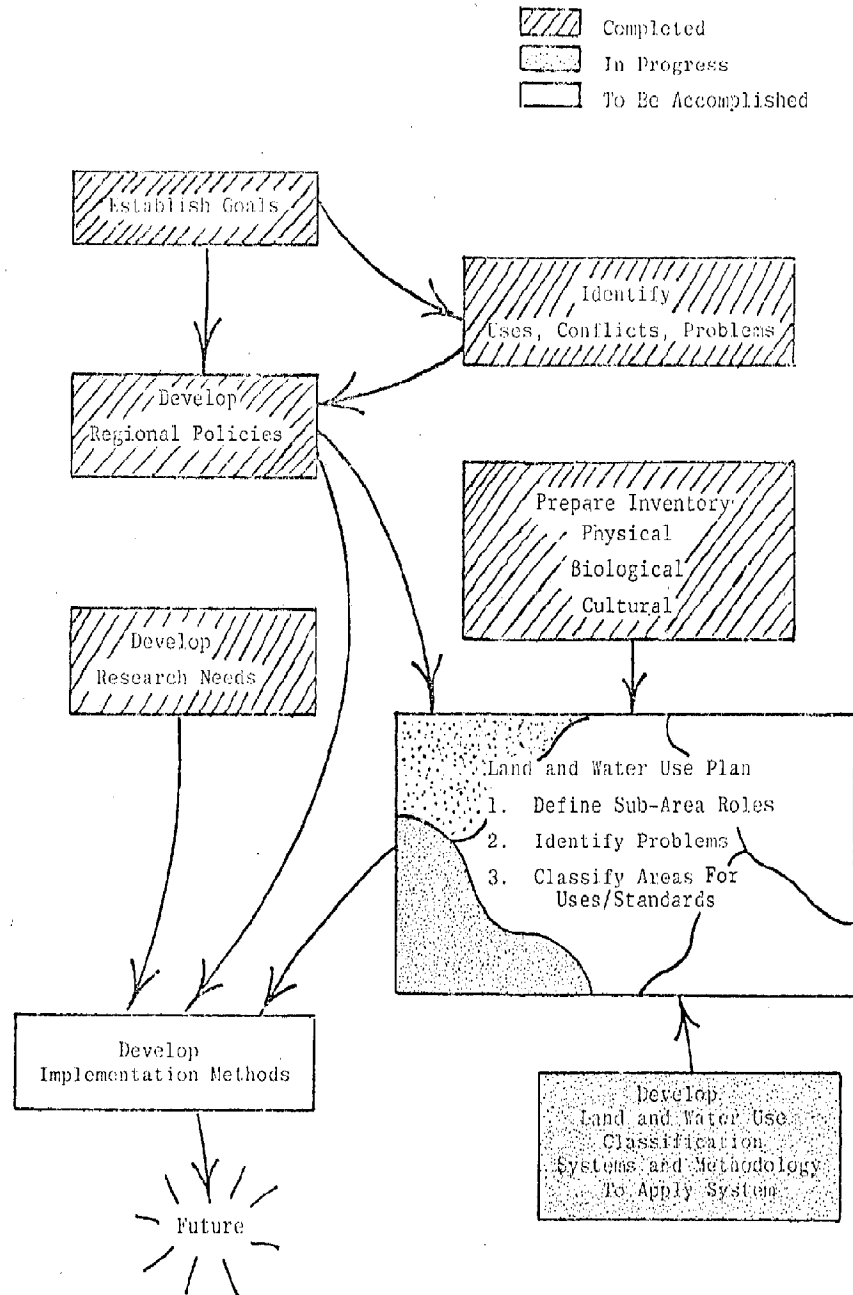
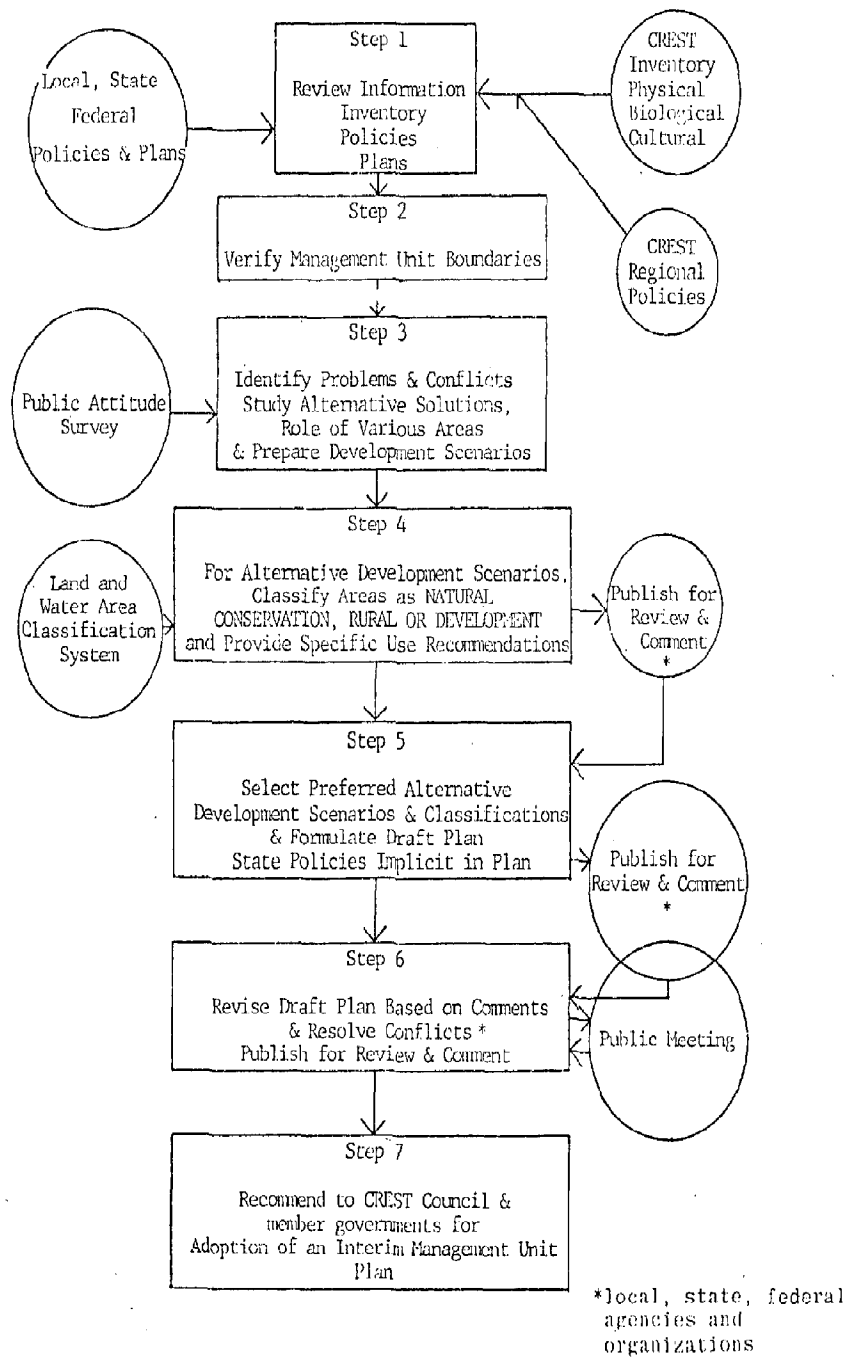




FIGURE 2. MANAGEMENT UNIT PLANNING PROCESS



Wetlands and Shorelands. Shoreland DEVELOPMENT areas were further subdivided into WATER-DEPENDENT/RELATED and NON-WATER-DEPENDENT/RELATED areas. A matrix of Permitted, Conditional, and Not-allowed uses has been developed to more clearly define the various categories. It is anticipated that this matrix will be augmented by Performance Standards.

The size and diversity of the Lower Columbia River areas has made it impossible to plan the entire area at one time. Five management units or planning areas have been established: Youngs Bay-Astoria, Baker Bay, Lower River and Mouth/Columbia River Islands, Wahkiakum County and Eastern Clatsop County. In each management unit, a citizen planning committee will work through the planning process shown in Figure 2. It was another strategic decision that the CREST Council would not itself be the working group. It was our judgment that the work load was simply too large for the Council to make routine decisions. Furthermore, a citizen working group greatly increases the opportunity for citizen input and the political acceptability of the plan. Two citizen committees have already been formed, one in the Youngs Bay-Astoria and one in Baker Bay. Work was started in these two areas because of the greater urgency of land and water use issues there. The Youngs Bay-Astoria committee has been meeting weekly since January and their Draft Plan is now almost ready for review. The Baker Bay committee has been meeting weekly since August and is working on a Draft Plan. We have found the citizen committees quite able, but insistent on a thorough discussion of almost every issue. A citizen committee is certainly not the fastest way to complete a plan.

We are anxiously awaiting the agency and public review of the first draft plan. The Youngs Bay-Astoria area will not only set the procedural pattern for subsequent areas, but most of the major issues will be confronted in this management unit. Upon completion of the five management unit plans, representatives of the five committees will meet to resolve conflicts and to assemble the complete estuary plan.

The method of implementation of the CREST Land and Water Use Plan has not yet been determined. Implementation is greatly complicated by the interstate, multi-county planning area. CREST itself is set to expire upon completion of the plan. Whether some permanent, regional management agency will be established must be decided by the CREST Council within the next ten months. However, work on the Estuary Resource Center - an educational program - is in the beginning stages. Options for implementations are discussed below.

To summarize briefly the CREST planning process: the citizen committees use the classification system to formulate the Land and Water Use Plan based on Inventory information, and guidance provided by the Goals and Regional Policies. Agency input is received through review and comment procedures. This, of course, is the ideal. Each member of a citizen committee begins with a strong set of opinions on the area and, in most cases, strong political allegiances. These opinions and allegiances in large part govern the committee members' attitudes toward resource management decisions, as discussed below. Agencies also have defined positions, based both on statutory authority and custom.

It is possible for a planning consultant to avoid involvement in the day-to-day issues of permits, dredge spoil disposal sites, etc. It is not possible for CREST to avoid such issues. In this area, the CREST Council routinely asks for staff recommendations. These are based primarily on the Inventory and the Regional Policies. It is in the area of Current Projects Coordination, however, where the desires of local officials and business interests are most likely to conflict with planning requirements and the need for wise resource management. These decisions cannot be made in a political vacuum.

ATTITUDES toward Planning. What then are the attitudes of the participants in our planning program and why do they remain involved? That is, what does each group perceive as its interest in the process? Remember, please, that I am trying to draw a group characterization of individuals, and exceptions can be found to any generalization.

In the last year, local government has been supportive of CREST, but frankly, local government in our area has not progressed beyond the point where jobs are the first priority. Estuary protection is a priority, but primarily because estuary protection is linked to jobs in fisheries, food processing, and tourism. The biological and esthetic values of the estuary are not perceived as priorities in themselves, or at least not very high priorities. CREST, however, is sufficiently a household word to be perceived by most local officials as beneficial to the community, though the reasons may be obscure and some of the implications unclear. Further development of attitudes is needed in three areas:

1. The sense that it is necessary to say: "we want this kind of development; we reject that kind of development." There is a general willingness to be tied down to particular uses of particular parcels of land;
2. A long-term, regional perspective - there is a strong tendency to think in a geographically limited, 1-3 year time frame when dealing with resources that have a much longer time scale and involve the entire estuary; and
3. Reliance on planning procedures to provide a rational evaluation of impacts of major new developments, though considerable progress has occurred in this area in the last year.

So why, after that pessimistic appraisal, do local officials and some to some extent, developers support CREST? There are several reasons: First, there is a strong feeling that the fishing industries must be protected and expanded. On this issue, perhaps more than any other, there is a regional consensus. Past land and water use disputes, such as Alumax and Pier 3 problems, have brought the realization that planning is necessary and may perhaps prevent the recurrence of these crises - a regional forum is required. Legal compulsion and regionalism are further motivating forces; if a plan is required, then it should be a community plan, not one

imposed by the state. The lure of the consistency provisions cannot be entirely ignored; these provisions are, however, regarded with considerable distrust.

How do local environmental groups view the Plan? They perceive the planning process as a way of limiting growth to less destructive areas - "Rational Resource Management." They are confident of the logical and legal strength of their arguments. They remain very skeptical of the political trade-offs that occur in the planning process, because these cannot be justified within the framework of resource management. It remains a question whether they will be satisfied with local determinations; appeals to state authority are possible. More positively, environmentalists view CREST as an opportunity to get necessary research funded, as a forum to bring forward restoration ideas, and as a way to educate local officials. CREST has always enjoyed strong support from local environmental groups, but they have also felt that CREST should take stronger stands on certain development projects.

What has been the posture of the various development interests in the community? There remains much skepticism among private developers, and in at least one instance, an open attempt to use the committee to achieve personal ends. Nonetheless there is a strong minority of business community that believes that planning is beneficial and will ease the permit application problem, help resolve conflicts in the community, and facilitate economic growth by designating development areas. These people have been extremely supportive of the CREST program, and they make up the bulk of the active members of the Youngs Bay/Astoria Committee. Participation in the planning process has definitely increased their belief in planning.

The Port of Ilwaco has strongly supported planning. Everyone involved in the Baker Bay Planning Committee agrees that the shoaling in the Bay is the major problem; this is the major unifying issue. There is, however, a need for a body with enough political muscle to deal with the Corps of Engineers.

The Port of Astoria is now an active participant and believes the CREST plan to be necessary; nonetheless, the Port feels its primary responsibility is economic growth and jobs. Protection of the estuary is definitely not a major priority.

More than 50% of the three-county area is owned by large, private timber companies. By and large, they have worked within the planning process. However, the Coastal Zone Management Acts of the two states are simply not designed to deal with forest practices and tributary stream water quality. Moreover, log storage and booming practices have not been an area of major controversy in this estuary.

What are the attitudes of state and federal agencies toward the program? Their interests are extremely diverse, and I can, therefore, draw only the broadest of generalities. First and foremost, agencies continue to insist that a plan is needed so that individual development proposals can be

evaluated. Furthermore, agency knowledge of the area is limited; thus, a local technical staff is of great utility in evaluating individual development proposals. CREST has not and will not relieve the resource agencies of the responsibility of saying "no," however. Completion of a plan will not entirely ease local animosity toward the regulatory authority of the state and federal government.

The CREST program has helped to focus attention on the research problems of the Columbia River. Several agencies have been very helpful in scheduling research useful to planning process. The Columbia River Estuary Study, being organized by the Pacific Northwest River Basins Commission, will be particularly useful in broadening the information base for future planning efforts.

As the CREST program progresses through the draft plan and implementation stages, agency attitudes in two other areas will be of considerable importance. The degree to which resource agencies will be willing to compromise in the review process is unclear. Furthermore, some other agencies seem to be back-peddling as fast as possible in the area of federal consistency.

Given the present state of CREST program, the question is perhaps premature, but what trade-off will be made and how? The Port of Astoria has the strongest local hand - everybody bends to what the Port wants, to some extent. The first of our Management Unit planning committees, the Youngs Bay/Astoria committee, sees itself as preparing a negotiating position with the resource agencies. Their plan is therefore, strong on development. At the same time responsible members of the business community on the committee find themselves advocating meeting the planning requirements, so that orderly development can occur. That is progress! The Youngs Bay-Astoria draft plan is not yet ready, so we do not know how the review process, and negotiations on the dredge and fill aspects of the plan will be conducted.

Does this admittedly political process meets rational resource management needs? We have not arrived at a point where the question can be answered. We are hopeful. Remember that the Land and Water Use Plan is only part of the CREST program. The growth in community attitudes is equally important.

How will the CREST program be implemented? There are several options for implementation:

1. CREST leaves behind only Regional Policies, modified comprehensive and Shoreline Master Plans and information products such as the Inventory. If this occurs, CREST will have succeeded in further complicating the management structure without giving it any real guidance or direction;
2. A regional organization of local government is formed that is essentially a continuation of CREST, with a different charter and staff. This would allow the needed regional

perspective and growth in management sophistication that is required. This solution may, however, be politically unacceptable; and

3. No regional organization is formed, but in addition to the Regional Policies, the modified Comprehensive and Shorelines Master Plan and information products, a variety of special purpose plans of regional scope are left behind. These include a Restoration Plan, a Dredged Material Disposal Plan, a Mitigation Bank, a Research Evaluation Committee, and an Estuary Resource Center, to name just a few. These would provide regional cooperation in specific problem areas without requiring a regional organization. Work has already begun in several of these areas.

The Implementation Committee will have to choose from among these and other options.

Finally, what problems will CREST not deal with? There is no small number of such problems! Let me point out two important areas. The first is that of non-point source pollution. Forestry and agricultural practices affect spawning habitat, water quality and tributary stream siltation. There is simply no effective mechanism in the Coastal Zone Management Acts to deal with these problems. The forested lands in estuary tributary watersheds are not even in the planning area.

The second involves issues of importance to the entire Columbia River Basin. Unlike other important watersheds in Oregon and Washington, the major population centers in the Columbia River Basin are outside the coastal zone. The Columbia River has a watershed of nearly 260,000 square miles, and most of the industry and political power is upriver of the estuary. Thus, it will be very difficult for CREST or any successor organization to deal with such issues as: water flow allocation within Columbia River Basin, major energy facilities, and Columbia River channel deepening.

Despite these weaknesses, we feel that the CREST program will ultimately succeed because the community wants it to succeed.

## RENEWING THE URBAN WATERFRONT

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### Summary

Urban waterfronts are often isolated from the rest of the city both physically and visually. Urban waterfront renewal offers the opportunity to reintegrate the waterfront and the city core by increasing public access and by reintroducing non-industrial land uses at the water's edge. Many cities have built costly renewal projects which repeat past mistakes. The successful implementation of waterfront renewal depends upon the application of clearly defined planning and design guidelines which are appropriate to the special economic, historic, aesthetic and ecological characteristics of the waterfront.

### The Nature of the Urban Waterfront

Many of our greatest cities were founded at the fortuitous conjunction of a protected harbor and a navigable waterway; New York, Philadelphia, Boston, Seattle, and San Francisco are among them. The historic core of these cities lies near the waterfront; residences, commercial and shipping enterprises, and institutions once shared a proximity to the water. As each city grew, it radiated out onto the hinterlands or into the harbor, on filled land. Gradually industry and shipping dominated the waterfront and the occurrence of other land uses declined. In many American cities the waterfront was eventually severed from the rest of the city, first by railroads, then by expressways.

Although the original coastal environment is nearly unrecognizable, the natural environment of the urban waterfront determines much of its present character. Over the years, natural processes have interacted with human activities in an eternal series of readjustments; the final form of the waterfront is the product of this interaction.

By limiting waterfront land uses primarily to industry, public utilities, and transportation we have denied other human activities which are equally well-suited to the water's edge: recreation, education, residence.

We have surrounded historic buildings, once part of the urban core, with derelict warehouses and vacant lots. We have diminished the aesthetic variety of the city. Long, open views along the shoreline and across the water contrast with confined views within urban spaces; views from the water often command a view of the city as a whole. But if the waterfront offers no vantage point, the views are unattainable.

#### Opportunity for Waterfront Renewal

Many cities now have an opportunity to physically and visually reintegrate the waterfront and the city core and to encourage a diversity of land uses and activities which are compatible with the waterfront for economic, historic, aesthetic, and ecological reasons. Abandoned railroad sidings, vacant lots, and empty warehouses and factory buildings offer opportunities for new development. In addition, the technology exists to confine transit routes and expressways in deep-bore tunnels or depressed roadways and to consolidate port storage facilities, freeing vast areas formerly needed for warehouses.

Urban waterfront renewal has been widespread in the recent past. Some cities have successfully revitalized their waterfronts. Others, albeit with good intentions, have repeated past mistakes and prolonged the severance of the waterfront from city life, by constructing new walls of high-rise housing and office buildings or expressways or by selecting and siting new land uses unwisely.

To sweep away the mistakes and dereliction of the industrial age waterfront is a formidable but not unusual task. The rarer and more difficult accomplishment is to utilize ecological and landscape planning effectively to prevent the repetition of old mistakes in new forms. All too often, derelict warehouses have been removed only to be replaced by new uses that, however outwardly attractive, sadly obscure views of the water by the rest of the city or provide new obstacles to public recreational access and use of the water's edge.<sup>1</sup>

#### Implementation of Waterfront Renewal

Successful waterfront renewal depends upon the translation of clearly defined policies and planning objectives into adequate regulatory and management programs and design guidelines appropriate to the special character of the waterfront.

There are many instructive examples of waterfront renewal projects undertaken in the past decade, including those of San Francisco, Cincinnati, Minneapolis, Baltimore, and Philadelphia. The three examples mentioned here - Toronto, Ontario; Boston, Massachusetts; and McIntosh County, Georgia - represent a range of scales and concerns. They are projects



with which professional staff of Roy Mann Associates have had significant involvement.

Over the past four years the City of Toronto Planning Board has published a comprehensive analysis of the socio-economic, political, physical, and natural environments of the Toronto Waterfront. Integrated policies, regulations, plans, and design guidelines based on these documents are being formulated to coordinate development. Implementation of policies and planning objectives is insured by design criteria which reflect the character of the Toronto waterfront, including such natural features as lake breeze patterns, landfill composition and settlement, watertable fluctuations, and harbour currents. The Toronto example is significant both for its scope and detail, and for its extensive examination of the natural environment of an urban waterfront.

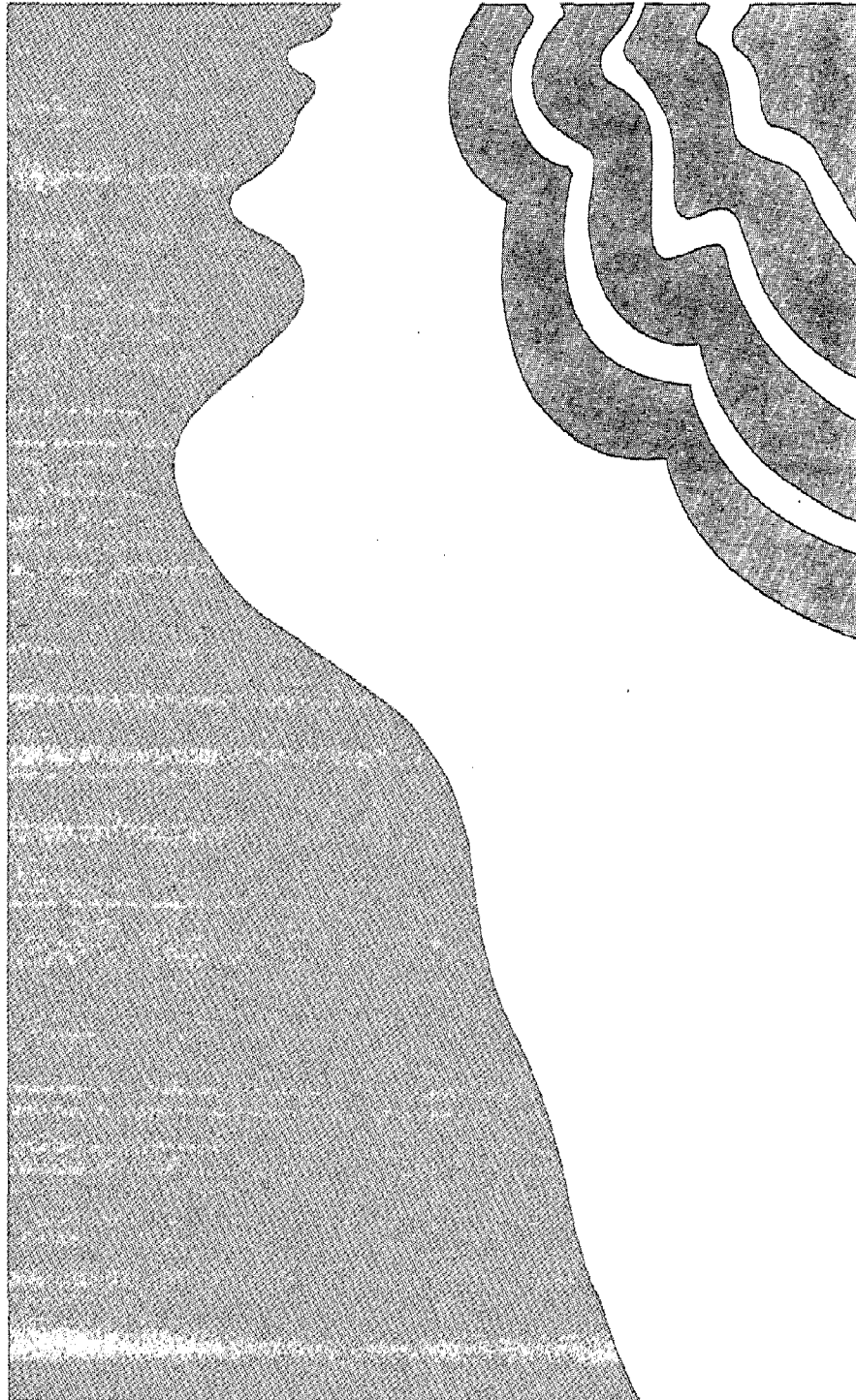
A transformation of the Boston waterfront has occurred over the past decade. New land uses have moved into the waterfront, including residences, commercial offices, parks, restaurants, and institutions. Physical and visual connections between the city center and the waterfront have been reestablished. Public open spaces lead from City Hall to the water's edge; developers have utilized older existing buildings and refrained from constructing a high-rise wall along the shoreline; a scheme to depress the elevated expressway which slices through the waterfront is under consideration. These details, as well as others, contribute to the successful reintegration of waterfront and city. Boston waterfront renewal has been accomplished by the combined efforts of public agencies, local interests groups, and private developers.

The Darienport waterfront represents a contrast in scale to those of Toronto and Boston. McIntosh County is the poorest and least populated county in the State of Georgia. The waterfront renewal plan is part of an overall tourism plan to attract revenue and create new jobs. The project was initiated by local individuals who sought aid from the state and received funds to support the project through the Coastal Area Planning and Development Commission. Despite the smaller scale, many of the same principles for waterfront planning and design utilized at Toronto and Boston are also applicable to waterfront renewal in Darienport.

Planning and design guidelines appropriate to the waterfront should be applied to any waterfront renewal project, whatever its scope or scale. The urban waterfront has a special character due to its individual natural, historic and aesthetic identity and its economic significance. If we are to revitalize the waterfront, policies, plans, or designs for renewal must account for all these factors.

<sup>1</sup> Roy Mann, Rivers in the City, 1973

## SESSION C: LEGAL AND LEGISLATIVE ISSUES



## OIL TRANSPORTATION POLICY FOR WASHINGTON STATE—A LITIGATION REPORT

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### The Issue

Should an oil transshipment facility be located in Washington State? And if so, where?

### The Setting

A. Under the federal Coastal Zone Management Act of 1972 (CZMA), states are encouraged to develop "management programs" designed to plan for and regulate use of their coastal waters and adjacent uplands. 16 U.S.C. 1456, et seq. Upon the approval of a state program by the Secretary of the Department of Commerce, 16 U.S.C. 1456 (c)(1) and (c)(3)(A) provides:

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

.....  
(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within 6 months after receipt

of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

B. On June 1, 1977, Secretary of Commerce Elliot Richardson approved a "management program" submitted by the State of Washington. On page 316 thereof, a statement of oil transportation policy for Washington State is set forth. That so-called "Evans Policy" provides:

A POLICY STATEMENT BY GOVERNOR DANIEL J. EVANS, ON THE SITING OF SINGLE, MAJOR CRUDE PETROLEUM TRANSFER SITE AT PORT ANGELES. SUPPLEMENTING AND AMENDING THE JANUARY 1976 WASHINGTON STATE COASTAL ZONE MANAGEMENT PROGRAM.

Coastal Zone Management Policy on an Oil Terminal at or West of Port Angeles

The state of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the Washington State coastal zone management program. State programs, and specifically state actions in pursuit of the intent of federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts.

Policy on the Expansion of Existing Oil Terminal Facilities

The use of a single offloading site at Port Angeles has the dual purpose of lessening vessel traffic in the inland marine waters and the number of transfer points with their associated spill problems. The objectives of this major proposal are to reduce the risk factor of a major oil spill by reducing the number of transfer sites, the amount of vessel traffic in constricted channels, and the amount of environmentally sensitive marine waters to be exposed to the risk.

The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to

accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the state coastal zone management program.

C. On July 20, 1977, Governor Dixy Lee Ray requested Secretary of Commerce Juanita Kreps to initiate procedures leading to the deletion of the "Evans Policy" from the state's management program.

D. 1. On June 3, 1976, Northern Tier Pipeline Company applied to the Washington State Energy Facility Site Evaluation Council (EFSEC) pursuant to chapter 80.50 RCW, for permission to conduct and operate an oil trans-shipment facility with a western terminus at Port Angeles.

2. On April 28, 1977, Trans Mountain Pipeline Company filed application with EFSEC for approval of a similar facility with a western terminus at Cherry Point.

E. On May 2, 1977, Trans Mountain Pipeline Company applied to the United States Army Corps of Engineers for a permit relating to its proposed Cherry Point facility. The permit requested was required by section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. §402, which provides:

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or water of the United States, outside established harbor lines or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

#### The Litigation

A. Litigation initiated in state court by the Coalition Against Oil Pollution - Coalition Against Oil Pollution, et al. v. State of Washington, et al., King County Superior Court No. 830785.

1. Basic request to court is to issue an order directing the Department of Ecology to rule upon certification provided in section 307 of CZMA based upon Evans Policy.

2. ARCO has intervened and raised the issue of the validity of the Evans Policy based upon procedural irregularities in the adoption of the policy.
  3. After a series of motions by various parties, the state court issued an order staying further proceedings in court for 60 days; if, upon the running of the 60 days, all issues raised in the state court proceeding are raised in Clallam County, infra, the state court proceedings will be dismissed.
- B. Litigation initiated in United States District Court in Seattle.
1. Lawrence J. Pearson and Coalition Against Oil Pollution v. Corps of Engineers of the United States, et al., No. C77-589, requesting court to enjoin Corps from processing application of Trans Mountain Pipeline Company pertaining to a Cherry Point facility.
  2. Clallam County v. United States of America, et al., No. C-77-578V.
    - a. Clallam County asked court to declare Evans Policy invalid based upon procedural irregularities in its adoption.
    - b. Coalition Against Oil Pollution, as intervenor, asks court to declare ARCO's section 10 permit application not suitable for processing by Corps and to enjoin Corps from processing application.
- C. Ray v. Atlantic Richfield Company (ARCO), Supreme Court of the United States, No. 76-930, relates to ancillary oil transportation policy issue.
1. ARCO challenges validity of Chapter 125, Laws of 1975, First Ex. Sess., which (1) bars 125,000 D.W.T. tankers from entering inner marine waters of state and (2) requires tug escorts (or certain safety equipment) for 40,000--125,000 D.W.T tankers operating in those waters.
  2. Major contentions by ARCO for invalidity are that:
    - a. Chapter 125 has been superseded, under Supremacy Clause of United States Constitution, by federal Ports and Waterways Safety Act of 1972 which provides ship design and vessel traffic control powers to the Coast Guard, and
    - b. Chapter 125 conflicts with Commerce Clause of United States Constitution based on uniformity of regulation requirements and undue burdens on interstate and foreign commerce.
  3. Case is now on appeal by state to United States Supreme Court requesting reversal of federal district court decision validating Chapter 125. Oral argument is tentatively set for October 31, 1977.<sup>1</sup>

Subsequent to the oral presentation on October 31, 1977 in Ray v. Atlantic Richfield Company, a major action affecting that litigation took place.

A. In October, President Jimmy Carter signed into law an amendment by Senator Warren G. Magnuson of Washington State, to the Marine Mammal Protection Act of 1972; Section 6, thereof, provides:

Sec. 6. (a) the Congress finds that (1) the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset;

(2) Puget Sound and the shore area immediately adjacent thereto is threatened by increased domestic and international traffic of tankers carrying crude oil in bulk which increases the possibility of vessel collisions and oil spills; and

(3) it is necessary to restrict such tanker traffic in Puget Sound in order to protect the navigable waters thereof, the natural resources therein, and the shore area immediately adjacent thereto, from environmental harm.

(b) Notwithstanding any other provision of law, on and after the date of enactment of this section, no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of the date of enactment of this section), other than oil to be refined for consumption in the State of Washington.

B. By this action most of the issues raised in the litigation reported on herein were mooted. The litigation containing live issues is that initiated by Clallam County challenging the validity of that portion of the Evans Policy which provides:

The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the Washington State coastal zone management program. State programs, and specifically state actions in pursuit of the intent of federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts.

And this litigation may also be mooted by action of Governor Ray's administration. Department of Ecology Director Wilbur G. Hallauer has stated, subsequent to the passage of the amendment to the Marine Mammal Protection Act, that the state would continue its aforestated intention of deleting the just-quoted Evans Policy.

FOOTNOTE

<sup>1</sup> Oral argument was heard by the United States Supreme Court on October 31, 1977. The appellants' position was presented by Attorney General Slade Gorton.



## EMERGING PATTERNS OF DECISIONS

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### Summary

The Shoreline Management Act is five years old, and today is an integral part of the activities of those who develop, or regulate development in Washington's shorelines. The primary regulatory device of the statute, the substantial development permit, has been employed more than four thousand times in this period. An examination of some of the cases where local decisions on permit applications have been appealed to the Shorelines Hearings Board reveals certain consistent results in application of the policies and procedures of the Act.

### I. Background

#### A. Shorelines Hearings Board

Established as a quasi-judicial body under the Shoreline Management Act (SMA), RCW 90.58, the Shorelines Hearings Board is composed of the three full-time members of the Pollution Control Hearings Board, an appointee of the Association of Washington Cities, an appointee of the Association of County Commissioners and the State Land Commissioner or his designee.

### B. Jurisdiction

#### 1. Shoreline Management Act (SMA)

The jurisdiction of the Shorelines Hearings Board is statutory and limited under the SMA to review of appeals by "aggrieved" persons from the "granting, denying, or rescinding" of a substantial development permit (RCW 90.58.180(1)) and appeals from local government of Department of Ecology regulations, guidelines, or master programs adopted or approved pursuant to the SMA (RCW 90.58.180(4)). With regard to appeals from aggrieved persons, either the Department of Ecology (DOE) or the Attorney General must certify within 30 days of filing that the requestor has "valid reasons to seek review." The action appealed to the Board must relate to the permit process. The Board has assumed jurisdiction to determine if a specific activity is subject to the requirement of the permit process. If no permit is required, however, it would appear that a development's consistency with the SMA, DOE regulations, or its respective master program must be ascertained in another forum.

## 2. State Environmental Policy Act (SEPA)

The Board has jurisdiction to review allegations of SEPA violations, both procedural and substantive, where such violations would affect the validity of a substantial development permit.

## 3. Environmental Coordination Procedures Act (ECPA)

Under RCW 90.62.080(1), the Shorelines Hearings Board has jurisdiction to review the issuance or denial of a substantial development permit when such action was a "final decision" rendered responsive to a master application filed under ECPA.

### C. Requests for review

More than 4,200 substantial development permit applications have been processed by local governments since 1971; 7% of these local decisions have been appealed to the Shorelines Hearings Board. The cases heard by the Board most frequently involve: citizens appealing a county or city's permit issuance; the DOE's appeal of a county or city's permit issuance; or a developer's appeal of a county or city's permit denial, or issuance with conditions. Since the recent adoption of master programs by almost all units of local governments, there have been several appeals of DOE's denial ("veto") of conditional uses or variances.

The Board can: uphold local government's decision, whether it involves granting, denying or rescinding a permit; remand the matter to local government for SEPA compliance; reverse a permit denial; vacate a permit; add conditions to a permit; remand to local government for the addition of conditions; uphold or override a DOE disapproval of a variance or conditional use. In a majority of cases, the Board upholds the decision of local government, and usually, where the action was the granting of a permit, conditions the permit, often in the area of building size and location to minimize density or visual impact; storm water run-off control; reduction in amount of fill; and provision of public access.

### D. Hearings

#### 1. Conduct

As often as possible, all six members of the Board sit at formal hearings which are conducted by a member or by a hearings examiner. Prior to hearing, each Board member is given and reviews files containing the pleadings, pre-hearing reports, and any briefs submitted. Hearings are usually held near the site of the proposal, and site inspections by the Board are customary.

Taking an average of two days to complete, a formal hearing consists of opening and closing statements, the taking of evidence, and the examination of witnesses.

#### 2. Scope/standard of review

RCW 90.58.180(3) provides that the Board's review of substantial development permits is subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) pertaining to procedures in contested cases.

The Board conducts a de novo review of the matter before it, examines the merits of the development at issue, and renders its ruling based on a preponderance of the evidence presented.

Specifically, the Board's scope and standard of review are as follows:

WAC 461-08-175 STANDARD OF REVIEW. (1) In deciding upon a Request for Review brought pursuant to RCW 90.58.180(1) and (2) the Board shall make its decision considering the following standards:

- (a) Consistency with the requirements of chapter 43.21C RCW, the State Environmental Policy Act.
  - (b) From June 1, 1971 until such time as an applicable master program has become effective, whether the action of the local government unit is consistent with:
    - (i) The policy of RCW 90.58.020; and
    - (ii) The guidelines and regulations of the Department; and
    - (iii) So far as can be ascertained the master program being developed for the area
  - (c) After adoption or approval, as appropriate, by the Department of an applicable master program, whether the action of the local government unit is consistent with the applicable master program and the provisions of chapter 90.58 RCW.
- (2) Evidence that is material and relevant to determination of the matter consistent with the standards set out in subsection (1) above, subject to these rules, shall be admitted into the record whether or not such evidence had been submitted to the local government unit.

*In any appeal, the decision made on the permit application by the local agency is a material fact but such decision is afforded no deference in the Board's ultimate determination.*

Despite the primary focus on adjudging a project's consistency with substantive criteria for development of the state's shorelines, the Board has not hesitated in some instances to vacate a permit or to remand the matter to the respective local agency because of procedural deficiencies in the processing of a permit or in the decision-making of the local agency. In other cases, the Board has chosen to emphasize its primary function, consider that the de novo nature of its hearing renders moot or harmless any deficiencies below, and proceed to a decision on the merits of the project.

### 3. Orders

In most cases, the Board issues a proposed Findings of Fact, Conclusions of Law and Order, reflecting the consensus of the members, within a month of a hearing (although a Final Order may be used where at least four members agree, and no benefit can be expected from consideration of exceptions by the parties).

In issuing its orders, the Board frequently imposes conditions. While no explicit statutory authority exists for the Board to impose conditions, it is implicit in its authority to sustain or vacate the permit at issue, i.e., the effect is to say the project as conditioned is consistent.

#### E. Appeals of Shorelines Hearings Board orders

Of the 128 Final Orders issued by the Board after completion of its hearing process, 40, or about 31%, were appealed to the Superior Court, the Supreme Court having held in SHB 11 (Washington Environmental Council v. City of Seattle and Department of Highways) that the Superior Court was the only court possessing original jurisdiction to review Board action. In more than one-half of the cases, the project proponent appealed the Board's denial of the permit or certain conditions attached to the permit approval. In one-fourth, the citizen appellant, often a resident of the area of the proposed development, appealed the Board's approval of a permit. The remainder involved state or local government appeal of a permit denial or the Department of Ecology's or Attorney General's appeal of permit approval.

Twenty-five of these cases have been finally resolved, six having reached the Supreme Court. In only three has the Board's decision been overturned, with the final judgment in these cases occurring at the Superior Court level.

#### II. Decisions

The primary responsibility of the Shorelines Hearings Board, in implementing the Shoreline Management Act, is to evaluate a substantial development proposal in terms of the policies and procedures of the Act, the guidelines, and the local master program. As the Board interprets often-conflicting provisions, and applies them to the unique set of facts in each request for review, some consistency in results can be observed--  
certain choices become predictable.

"The Board," itself, is a continuously changing entity; it is a rare month in which the same members attend every hearing. Each of us brings to our consideration of an appeal a unique combination of education and experience. In deciding an appeal these individual characteristics are combined with a commonly shared set of information: the applicable statutes, regulations and ordinances, prior Board decisions involving similar issues, court decisions on previous cases, and the testimony, evidence, and argument received during the hearing.

To illustrate the decision-making process, I've chosen three areas of concern which are present in a substantial number of appeals, regardless of geographic location, type of development, or nature of the shoreline-- fill, aesthetics, and public access--and selected, typical Board decisions involving these issues.

##### A. Fills

"Filling" is listed in the SMA as a "development." Assuming that the proposed fill has a cost or value exceeding \$1,000, or "materially interferes with the normal public use of the water or shorelines . . .," it is a "substantial development" (90.58.030 RCW) and is subject to the permit requirements of 90.58.140 RCW. The policy section (90.58.020 RCW) directs us to ". . . provide for the management of the shorelines of

the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest . . . ."

The DOE Guidelines (WAC 173-16-060(14)), after noting that "... most landfills destroy the natural character of land, create unnatural heavy erosion and silting problems and diminish the existing water surface," set forth four criteria for their design and location. These involve: (a) avoiding damage to natural resources, life and property; (b) erosion control; (c) avoiding water quality degradation; and (d) priority for water-dependent uses and public uses.

The Board would further examine regulations regarding fill in the local government's master program, and then examine the characteristics of the proposed development site (often through an on-site inspection), and the anticipated environmental impacts of the development.

#### 1. Fill to create parking spaces

The Board has ruled that fill to provide parking spaces for a boat launch or marina is not a use dependent on the shoreline (although the primary use is water-dependent), and "... fills on an inter-tidal beach to provide parking space are highly objectionable under any circumstances." (SHB 13). See also SHB 104; SHB 128.

However, in SHB 76, the Board found that "DOE Guidelines relating to fill and parking are not mandatory, but suggestive and flexible depending upon local conditions, and that a landfill for a marina parking lot and other water-related structures in an area zoned heavy industrial is permissible where the proposed development will serve the recreational demands of a substantial portion of the general public." The distinction is the location and condition of the shorelines, and the degree of intrusion or alteration resulting from the action.

#### 2. Fill to create home sites

The Board has found that a proposed fill which would convert a natural shoreline into a construction site by filling, is neither a water-dependent nor a public use within the meaning of the guidelines on landfills, and thus fails to meet their priority test. (SHB 150)

Further, a landfill for a residence on natural shorelines of statewide significance would reduce the rights of the public in navigable waters without promoting a corresponding public interest. (SHB 153). See also SHB 159; SHB 238.

#### 3. Fills which cause/mitigate water pollution

Consistent with the policy of the SMA, which requires that any permitted use be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and interference with the public's use of the water, the Board found that a large fill on the inter-tidal area for a private boat ramp and boat storage would be unnecessarily damaging to the inter-tidal area just to serve such a need. (SHB 29)

The proposed disposal of cedar wastes in an ecologically fragile shoreline area, which would degrade the environment and pollute the public waters, was found not consistent with the policy of the SMA and WAC 173-16-060(14, 15) which provides guidelines for landfills and solid waste disposal. (SHB 63)

However, a proposed fill of clean sand in an area zoned manufacturing, where there has been previous wood waste disposal, which would have negligible adverse effects but would improve the site and impart an improvement to the water quality, is consistent with the SMA. (SHB 74) See also SHB 103.

## B. Aesthetics

The SMA directs that, in implementing the policies of the Act through the permit program, "... the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible ..." RCW 90.58.020. SEPA, the policies of which are supplementary to the SMA, further declares the state's intent to "Assure for all people of Washington ... esthetically and culturally pleasing surroundings." (RCW 43.21C.020)

### 1. When the site is on a shoreline of statewide significance

Where the shoreline has been designated as having statewide significance, consideration of aesthetics is particularly important. In a recently decided case involving a gravel operation on Hood Canal, the Board found:

Intensive land uses or developments within the shoreline of Hood Canal, a shoreline of state-wide significance, should be discouraged or prohibited. It is difficult to perceive a use more intensive and incompatible with the present shoreline and aesthetics of Hood Canal than the construction proposed by the Company. The pier, conveyor and barge loading facilities will intrude upon the magnificent grandeur that is now existent, converting the natural characteristics and beauty of the existing shoreline into one marred by this proposed industrial enterprise. Only when there is a clearly defined and present necessity for tolerating an abuse of nature's scene should an intrusion of the type here suggested be allowed in Hood Canal. (SHB 115)

A proposed private community boat ramp to be constructed on Hood Canal, a natural shoreline of statewide significance, with restrictions as to use, parking and material disposal, was nonetheless inconsistent with the SMA because the proposed boat ramp was aesthetically incompatible with adjacent areas, even though it afforded access to the water for substantial numbers of boaters. (SHB 144)

### 2. Decision of local government accorded substantial weight

Because of the subjectivity of aesthetics, where a dispute exists as to whether a development is pleasing or displeasing, the determination of local government is entitled to greater weight than individual opinion. (SHB 129)

### 3. When site is natural/developed

A context for decision in residential developments of a growing, bustling metropolitan area is different from that of a pristine area. When a development would cause only minimal obstruction of view and public access would be the same, it would be of little consequence to the public that a permitted use be allowed. (SHB 209)

Proposed concrete boat ramps in an area extensively used for park and shoreline recreational uses, which would render the entire beach and its natural areas less attractive, should be eliminated from a permit. (SHB 13)

On scenic and natural shorelines of statewide significance, the construction of a private pier-type dock would destroy an unobstructed view of the waters without promoting and enhancing a public interest and is therefore inconsistent with the policy of the Act, and master program. A floating dock would, on the other hand, preserve the view. (SHB 140)

### C. Public access

The SMA directs state and local governments to give preference to uses which "Increase public access to publicly owned areas of the shorelines." Further, on all shorelines, "Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state." (RCW 90.58.020)

#### 1. Public access may be provided by a private community development

The limited shoreline resource can provide a direct recreation opportunity to people in each of three ways, each of which must be considered as a legitimate opportunity to enjoy this finite resource: (1) through private ownership; (2) through joint or community ownership, and (3) through public ownership. Public ownership of waterfront recreational facilities offers the highest benefit cost ratio, yet the amount of public ownership must necessarily remain quite limited. Joint or community ownership of waterfront presents the next highest benefit cost ratio, providing an effective means for multiple use and enjoyment of the shoreline resources. (SHB 45)

#### 2. Public access may justify a non-water-dependent use

A development which is neither water-dependent nor water-related would be inconsistent with the policies of the SMA and would not be allowed unless it can be shown that "the proposed use will be of appreciable public benefit by increasing public use, enjoyment or access to the shoreline." (Seattle Master Program) The Board upheld a permit for such development, an office and plant facility on Elliott Bay, with

conditions to safeguard pedestrian and bike traffic through the site, provide public access to a private parking garage, and provide signs on the abutting arterial alerting the public to the access available. (SHB 158)

The construction of a small office building on Lake Union, where no water-related use was assured, became a use consistent with the policies of the SMA through provision of regulated public access (posted signs, a paved path access to an existing dock, and construction of a public toilet facility). (SHB 205) See also SHB 156.

### 3. Public access may be provided by a commercial development

Although not water-dependent, a campground is a priority shoreline recreational use which will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. A campground which is privately owned nonetheless offers public recreational opportunities where all members of the public are admitted by payment of a user fee. (SHB 230)

A well-planned marina, which greatly enhances the public's right of navigation and facilitates public access to the shoreline through its fishing floats, camping facility and moorages, and which will be constructed in a manner that minimizes the adverse effect on the environment, is consistent with RCW 90.58.020. (SHB 166) See also SHB 16; SHB 75.

A proposed delicatessen which would provide an opportunity for substantial numbers of people to enjoy the shorelines of the state, would impair no scenic view, and would be located in an intensively developed urban environment, is not inconsistent with the Act, even though the proposed use is not water-dependent. (SHB 201)

On artificially altered shorelines with existing mixed uses, including some non-water-dependent, the administration of the SMA must be done with a practical regard for the realities of past events. In such areas, over-the-water construction of a private clubhouse and restaurant which would provide an opportunity for substantial numbers of people to enjoy the shorelines may be permissible. Such proposed development must be otherwise consistent with the SMA and compatible with local features. (SHB 22)

The SMA policies and provisions are more often directory than mandatory in planning for the development of the shorelines, allowing local governments substantial latitude in designing their Master Programs to accommodate locally unique shoreline characteristics, development patterns, and community desires. Early SHB decisions were based solely on a proposal's consistency with the broad criteria of the Act, and later, the DOE Guidelines. With adoption of Master Programs now almost complete, and assuming that these programs are not inconsistent with the Act and Guidelines, I would anticipate that the nature of future appeals, and the Board's decision-making range, will be somewhat narrowed, perhaps dealing with resolution of inconsistencies or conflicting provisions within a local program, or resolving procedural disputes relating to SEPA compliance, or conditional use and variance provisions.



#### REFERENCES

Shoreline Management Act, RCW 90.58.

Washington Administrative Procedure Act, RCW 34.04.

DOE regulations pertaining to "Permits for Substantial Developments." WAC 173-14.

DOE Guidelines relative to development of Master Programs, WAC 173-16.

Shorelines Hearings Board Rules of Practice and Procedure, WAC 461-08.

State Environmental Policy Act, RCW 43.21C.

State Environmental Policy Guidelines, WAC 197-10.

Final Orders of the Shorelines Hearings Board.

## FEDERAL CONSISTENCY—A PAPER TIGER?

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We do not know the answer to the question posed in the title of this presentation. Until we have more experience in coastal management program activities, we will not know what power rests behind the federal consistency provisions of the Coastal Zone Management Act of 1972 (CZMA). It is, however, an extremely important question to ask. If federal consistency is a powerful legal tool, major decisions about coastal development will be made as a part of state and local coastal management programs. Federal decision-makers will participate in state-local planning activities. If federal consistency is found to be no more than an admonition for better coordination between federal, state and local agencies, business will proceed as usual, with independent federal agency reviews of state and local decisions. This presentation will attempt to answer four questions: What is federal consistency? What is the pessimist's view of federal consistency? What is the optimist's view of federal consistency? Can federal consistency force cooperative federal-state planning?

### What is Federal Consistency?

During 1970-1972, when the coastal zone management bills were being debated in the Congress, considerable attention was paid to the relationship between traditional federal resource management agencies such as the Corps of Engineers, U.S. Fish and Wildlife Service, Federal Power Commission, and others, and the states who would develop and administer coastal management programs. The states argued that if they go through an elaborate planning process for the coastal zone they should not be subject to a federal veto of a state decision. States wanted to gain some power as a result of doing coastal planning under federal guidelines. Federal agencies found this argument hard to counter, but fought for mitigating language in the bill, called "escape hatches," which would preserve federal independence where federal lands and national security were at stake. They also fought for a "practicability" exception and a non-derogation clause which would assure that traditional federal agency power was not undermined. Industrial interests argued that states should consider national interests and regional benefits in their planning.

What emerged, therefore, from the legislative debates is the "CZMA federal-state balance"--a pre-approval, post-approval bargain between state and federal interests. Before state coastal management programs are approved, states must consider national interests and involve federal agencies in the development of the program. Before programs are approved, the federal agencies get a chance to deal directly with the Secretary of Commerce to have their interests and preferences considered in the program submitted by a state for approval. After a program is approved, federal agency activities and development projects must be consistent with state programs to the maximum extent practicable, and federal permits, licenses and grants cannot be given to individuals or governmental entities if they are inconsistent with approved programs. In the latter case, the Secretary of Commerce can review decisions finding a request for a permit or grant "inconsistent" with the program. Thus, before a coastal management program is approved federal agency and national interest considerations help shape the coastal management program. After approval, federal agencies must live with the program they helped to shape.

The federal Office of Coastal Zone Management issued proposed federal consistency regulations on August 29, 1977. Included in the regulations is a table detailing the federal consistency provisions, reproduced here as Table 1.

#### What is the Pessimist's View of Federal Consistency?

As mentioned above, the operation of the federal consistency requirements is limited in a number of ways. A pessimist might view these as crippling, requiring only better coordination between federal and state interests in the coastal zone.

Under the CZMA, other federal statutes and programs are said not to be affected by the CZM program. This "non-derogation" clause is often found in federal statutes. It usually insures that other federal laws are not intended to be superceded. Courts interpreting the phrase may find that it neutralizes or diminishes the effect of the federal consistency provisions.

If the "escape hatches" are interpreted broadly by the courts, this could weaken the federal consistency provisions. The requirement that federal agency activities be consistent "to the maximum extent practicable" could be construed as discretionary language allowing federal agencies broad leeway in deciding how and when to be consistent. Courts have in the past been reluctant to release federal agency responsibility to state control unless congressional language is clear and unambiguous. Further, the Secretary can override a state determination that a proposed action is inconsistent with its program. The Secretary's use of this independent review authority could decrease, considerably, the potency of the consistency provisions. Finally, federal lands are excluded from the state's definition of the coastal zone. Thus, states have no direct leverage over those federal activities on federal lands unless they can be shown to directly affect the state's coastal zone. If federal lands activities directly

TABLE 1. Federal consistency matrix diagram.

CZMA Section	307(c)(1) & (2) (Subpart C)	307(c)(3)(A) (Subpart D)	307(c)(3)(B) (Subpart E)	307(d) (Subpart F)
Federal action	Direct federal activities including development projects	Federally licensed and permitted activities	Federally licensed and permitted activities described in detail in OCS plans	Federal assistance to state and local governments
Coastal zone impact	"Directly affecting the coastal zone"	"Affecting land or water uses in the coastal zone" <sup>1</sup>	"Affecting any land use or water use in the coastal zone" <sup>1</sup>	"Affecting the coastal zone" <sup>1</sup>
Responsibility to notify state agency	Federal agency proposing the action	Applicant for federal license or permit	Person submitting OCS Plan	A-95 Clearinghouse receiving state or local government application for federal assistance
Notification procedure	Alternatives chosen by federal agency (subject to NOAA regulations)	Consistency certification or equivalent procedure set forth in CZM Program	Consistency certification	OMB Circular A-95 notification procedure
Consistency requirement	Consistent to the maximum extent practicable with CZM Program	Consistent with the CZM Program	Consistent with the CZM Program	Consistent with the CZM Program
Consistency determination	Made by federal agency (review by state agency)	Made by state agency	Made by state agency	Made by state agency
Federal agency responsibility following a disagreement	Federal agency not required to disapprove action following state disagreement (unless judicially impelled to do so)	Federal agency may not approve license or permit following state agency objection	Federal agency may not approve federal licenses or permits described in detail in the OCS Plan following state agency objection	Federal agency may not grant assistance following state objection
Administrative conflict resolution	Voluntary mediation by the Secretary (Subpart G)	Appeal to the Secretary by applicant or independent Secretarial review <sup>2</sup> (Subpart H)	Appeal to the Secretary by person or independent Secretarial review <sup>2</sup> (Subpart H)	Appeal to the Secretary by applicant agency or independent Secretary review <sup>2</sup> (Subpart H)
Associate Administrator reporting of inconsistent federal actions	(Subpart I)	(Subpart I)	(Subpart I)	(Subpart I)

Source: Federal Register, Volume 42, No. 167, pages 43588-89, August 29, 1977

<sup>1</sup>These terms all have the same meaning.<sup>2</sup>Voluntary mediation by the Secretary is also available in certain cases.

affect the state's coastal zone, they must be consistent under the consistency provisions. The breadth with which the exclusion is interpreted could affect the degree of state control over federal actions.

Beyond the specific provisions of the CZMA which will require court interpretation before federal-state power relations are settled, there is a broader issue to be considered. State coastal management programs which have been approved contain broad policies and decision-criteria; they contain few, if any, specific land and water use plans. The coastal management programs tell us how decisions are to be made; they do not identify land and water uses ahead of time. Thus, although federal agencies participate in coastal management program development, they cannot foresee precisely with what they must be consistent once a program is approved. This problem will plague federal-state relations questions until coastal programs become more specific. Until that time, courts may well be in sympathy with the federal agency argument that consistency should not be interpreted stringently against federal agencies until they can reasonably foresee the kinds of land and water uses state and local governments intend to allow or disallow in their coastal zone.

Finally, the pessimist will point to two court decisions which suggest a narrow interpretation of federal consistency. First, in California v. EPA, the U.S. Supreme Court ruled that federal agencies need not get state water pollution control permits because the language of the federal Water Pollution Control Act allegedly requiring them to do so was not "clear and unambiguous" as the Court required. Some argue that the language in the Water Pollution Control Act is clearer than the federal consistency provisions of the CZMA, suggesting that Courts may view the consistency provisions narrowly.

Second, in Ray v. ARCO, a three-judge panel in Seattle characterized the CZMA as mandating "cooperative federalism" only. Washington's approved coastal management program allegedly included the state's oil tanker law. The Coast Guard and ARCO argued that the state's tanker law conflicted with the federal Port and Waterway Safety Act. The Court found that the state's law was preempted by the federal law and that the federal consistency provisions of the CZMA could not change that. They viewed the CZMA as calling for better cooperation between federal and state agencies. That case has been heard by the U.S. Supreme Court and a decision should be reached in 1978.

#### What is the Optimist's View of Federal Consistency?

It could be argued by the optimist that the consistency provisions of the federal CZMA are a powerful tool to insure federal actions conform to state land and water use plans and decisions. Arguments for consistency interpretations favoring state and local governments would stress, most likely, four major points.

First, the CZMA contains many provisions which Congress would not have included in the Act if consistency were not meant to change federal-state relations. Federal lands are excluded from the coastal zone because the activities which directly affect the state's coastal zone must be consistent with the state's program even if they occur on the excluded federal land. Further, the Act establishes a mechanism for mediation of federal-state differences and for secretarial review of certain consistency decisions by the Secretary of Interior regarding leasing, developing and operating on the outer continental shelf for oil and gas resources. One could argue that these provisions of the CZMA are in the Act to buffer the blunt effect of the consistency provisions. Thus, Congress intended consistency to be a powerful state lever over federal actions affecting the coastal zone.

Second, the legislative history of the CZMA shows that Congress intended consistency to be interpreted in favor of the states. In both the Senate and House of Representatives reports on the bill, the consistency provisions are viewed as mandating federal compliance with state programs. The escape clause "to the maximum extent practicable" is not mentioned at all in the Senate report, and in the House report it is clear that the "leeway" provided by that clause is meant to apply to problems of a practical nature that make it impossible for a federal agency to adhere to the state's program, such as an unforeseen circumstance that occurs after a program is approved.

Third, federal agencies have taken the consistency provisions very seriously. At most stages in the development of coastal management programs, federal agencies, led by the Navy and Coast Guard, have fought for the narrowest possible interpretation of the CZMA. When the federal lands exclusion question arose, the Department of Defense led the battle to have the U.S. Attorney General interpret the clause. The result was an opinion favoring the exclusion of federally owned or leased lands from the definition of the coastal zone. In the proposed consistency regulations published in the Federal Register on August 29, 1977, federal agencies won a number of interpretations to the Act lessening the impact on them. When the Washington, Oregon, and California coastal management programs were reviewed prior to approval, many objections of federal agencies had to be answered before the federal Office of Coastal Zone Management would approve the program. This close scrutiny is motivated, in part, by fear that the consistency provisions could be interpreted to affect adversely federal agency decisions in the future.

Fourth, the real test of the federal consistency provisions will come in the courts. All participants in coastal management program activities in the country are anxiously awaiting some definitive rulings. Unfortunately courts have addressed the CZMA act only in a few instances, and the results are inconclusive at this time. In addition to the Ray v. ARCO case discussed above, four other cases are worth mentioning.

In Suffolk v. Secretary of the Interior, a case challenging lease sale No. 40 off the coast of the mid-Atlantic states, the U.S. District Court invalidated the sale because of a defective EIS. The court found that a NEPA review requires close attention to a coastal management plan as it is developing, so that local planning for offshore-related pipelines and other shore-based facilities could be considered in the EIS. The circuit court reversed the decision and validated the sale. They noted that the coastal management programs are still developing and it is too early to determine the wishes of state and local government on pipeline route selection. Further, the court cited the federal consistency provisions and noted that eventually any pipeline route will have to conform to state desires.

In two Washington state cases, CAOP v. Washington and Pearson v. Corps of Engineers, environmental interests have sued government officials forcing strict adherence to federal consistency procedures. The Washington Coastal Management program contains a policy statement that any oil transshipment facility located in the state be sited at, or west of, Port Angeles. The law suit asks for a negative consistency determination by the state and the Corps of Engineers because an application to the Corps is in apparent conflict with the program. An additional suit alleges that the oil port policy is not a valid part of the CZM program. One opinion by a state judge in a recent phase of this litigation suggests that the procedures outlined in the CZMA must be strictly followed, and the state must make a consistency determination on the oil port application. All three cases may be joined and heard in federal court in the near future, since the issues in each are very much related. (Recent new federal legislation banning oil transshipment in Puget Sound may have made moot some of the issues in this litigation.)

The Western Oil and Gas Association (WOGA) recently got a temporary restraining order against the federal Office of CZM to prevent them from approving the California Coastal Management program. Although the consistency provisions of the CZMA are not at issue in the case, the reason for the lawsuit is the fear that the state will use the consistency provisions to stall federal agency decisions related to outer continental shelf energy development. WOGA argues the state did not adequately consider national interests in the energy development portions of the program and that the state will use its influence under the consistency provisions to stop OCS oil and gas production.

Finally, the City of San Francisco has sued the U.S. Department of the Navy and others regarding the terms and conditions of a lease of Navy property for shipyard purposes. One of the allegations in the lawsuit is that the effect of the lease terms is to deny the use of the property for deepwater port development, and that such a denial is contrary to the approved coastal management program for the San Francisco Bay area. The city claims the federal consistency provisions of the CZMA require the Navy to provide in its lease arrangements for those uses that conform to the approved coastal management program.

The cases discussed above do not allow any conclusions to be drawn about the consistency provisions. Most have not been resolved. It is evident, however, that there will be court decisions in the near future that may determine if the pessimistic or optimistic view of consistency will prevail.

#### Can Federal Consistency Force Cooperative Federal-State Planning?

This presentation has asked the questions lawyers love to ask. What is the "law" of federal consistency? How might courts interpret the law in the future? Are power relationships among federal and state agencies changed because of federal consistency?

The better question is: What interpretation of federal consistency will result in cooperative federal-state planning so that federal and state interests are considered in each plan or decision, and reliance on power advantages is minimized?

We suggest that two of the consistency provisions, Sections 307(c)(1) and (2), be interpreted to require federal agencies to incorporate state coastal management program objectives, policies and standards into federal planning and decision-making at the earliest practicable time. This interpretation of consistency would be "action-forcing" because steps would have to be taken, which a court could review, to include state and local considerations in the federal plans. The requirement that federal actions be consistent "to the maximum extent practicable" would translate into a duty on the part of federal agencies to give state and local requirements more than token consideration. Federal agency planning would have to include the state's "management program," which the CZMA defines as the objectives, policies and standards which guide public and private uses of land and water in the coastal zone.

What would this interpretation mean in actual practice? First, it would require federal activities and development projects to be planned in accordance with the substantive elements of a state's coastal management program. A federal agency which fails to do this could be enjoined from further action by a Court. Second, it would mean that state and local governments provide planning information to federal agencies. Federal agencies would then interpret the management program as it relates to federal projects or activities. States could ensure, through court action if necessary, that federal activities are planned in accordance with state program objectives, policies and standards, but could not automatically require particular federal action.

If this interpretation of two of the federal consistency provisions is accepted, it will achieve two ends. Early federal-state joint planning will result because as we learned in the early years of the implementation of NEPA, internal procedures of federal agencies will be changed to avoid delay in the implementation of the agency program. Also, the interpretation places a positive duty on federal agencies and does not require a ruling that federal agencies must adhere to state wishes. If the latter



Interpretation were demanded, it would result most likely in an emasculation of the federal consistency provisions because courts are reluctant to give states power to override federal agencies unless Congress clearly intended that to be the case.

## THE COASTAL ENERGY IMPACT PROGRAM

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I appreciate the invitation to provide you with a brief overview of the newly established Coastal Energy Impact Program, commonly known as the CEIP. As some of you who are familiar with the program appreciate, the CEIP is simple in concept, but somewhat complex in structure. What I would like to attempt in the 15 minutes allotted me is describe the program, conceptually and structurally, as well as give you some idea of the status of the program in Washington at this time.

The CEIP is primarily a grant assistance program. The program was established in 1976 when Congress officially recognized that expanding energy supplies to meet increasing domestic and industrial needs will place new demands on the land and water along our nation's shores; that these unique areas are also highly regarded for environmental, recreational, and economic values; and that the competition for the use of coastal resources is increasing. Congress further recognized that:

- Accelerated development of Outer Continental Shelf (OCS) oil and gas would require a variety of onshore support facilities;
- Sixty percent of United States refining capacity is already located in coastal areas;
- Much of the anticipated growth in electric-generating capacity will be installed in coastal locations to serve people (more than 50 percent of the United States population lives in coastal counties) and industry (40 percent of the United States industrial complexes are in estuarine areas).

To meet these expanding energy-related needs in harmony with the objectives of emerging state coastal resource management programs, Congress, in 1976, amended the Coastal Zone Management Act to create the Coastal Energy Impact Program. The 1976 amendments were, in part, a response to the call for increasing our nation's energy self-sufficiency. The foreign oil embargo, coupled with increasing domestic energy needs, pointed

clearly to the need for further development of national energy resources. At the same time, it was recognized that this development must occur in an orderly and environmentally sound manner, particularly in coastal areas which would be impacted by increased development of OCS oil and gas development and by expansion of other coastal-dependent energy facilities. The Office of Coastal Zone Management administers the program at the federal level. On March 10, 1977, Governor Ray designated the Department of Ecology (DOE) as the lead state agency for the administration of the CEIP.

Although the CEIP probably won't be significant in terms of influencing the energy facility decision-making process, it should ease the burden of energy facility impacts once a siting decision is actually made. It is, in part, for this reason that the program is especially aimed at the local level. It is probably at this level that the impacts of energy facility development will be felt most directly.

Of particular concern is the timely provision of public services and facilities. For example, a local tax base may not be sufficient initially to support what often can be a substantial public investment for necessary facilities such as added classrooms, more police and fire protection, water and sewer lines, or improved roads required to accommodate new residents adequately.

The CEIP is designed especially to help local government contend with the rapid growth associated with energy development. It is the philosophy of DOE in administering the program that the majority of CEIP assistance available to the state be passed through to local government. Furthermore, CEIP assistance will only be granted when the proposed use of the assistance is consistent with the Washington Coastal Zone Management Program.

Structurally, the CEIP is set up to provide four basic kinds of assistance to states and local units of government: 1) Planning Grants, 2) Credit Assistance, 3) Repayment Assistance, and 4) Environmental Grants.

1. Planning Grants are available to help prepare for the consequences of new or expanded energy facilities in the coastal zone. For example, grants could be used to revise local plans to consider the population influx from an energy facility or devise strategies for recovering compensation from the developer of an energy facility for adverse environmental or social impacts; help collect fiscal data to aid in projecting required public facilities and services such as roads, schools, or waste treatment plants. Grants are also available to help identify ways of protecting sensitive environmental areas such as spawning or critical habitat areas affected by the construction of an oil transfer facility, platform fabrication yard, power plant, or other type of energy facility.
2. Credit Assistance is available to the community in the form of direct loans or bond guarantees. For example, a community may

determine that a new school will have to be built because of an influx of new families associated with a new coastal energy facility. Although the community tax base will eventually be expanded, there will be a time lag between the time the new school is needed and the time the facility and new residents are actually contributing to local revenues. The CEIP could provide financial backing for the community as it seeks to acquire funds through borrowing so that required public facilities and services can be provided when needed. Other types of public facilities which could be financed include new sewage treatment systems, air and water quality monitoring equipment, or water supply systems. Credit assistance could also be used to purchase land to replace valuable environmental resources lost because of coastal energy activity.

3. Repayment Assistance is also available to a community that cannot meet its CEIP credit obligations because revenues from coastal energy activity fail to materialize as expected. This amounts to a guarantee that a community receiving CEIP assistance will not sustain a net fiscal loss from coastal energy activity. For example, suppose a community has expanded its sewage treatment plant and put in place new water and sewer lines to accommodate an expected facility; however, conditions change so that a decision is made to close the energy facility. Thus, the expected increase in tax revenue which has been counted on to cover the loan or bond obligation which financed the public facility will not be forthcoming. In such a case, the obligation can be covered by funds from the CEIP. The circumstances under which this can happen are:
  - a. If the community has taken a direct loan from the CEIP, or has utilized a CEIP guarantee; and
  - b. There is a change in scope of the energy activity such that sufficient revenues do not materialize as projected.

Repayment assistance can consist of modification of credit terms, refinancing, a supplemental loan, or a repayment grant.

4. Environmental Grants are available to help prevent, reduce, or repair damage to or loss of valuable environmental or recreational resources. If, for example, the siting of an energy facility in the past resulted in the loss or damage to a public beach, a community could use CEIP environmental grants to purchase access rights to a similar beach area or devise and enforce legal conditions imposed by the permit for an energy activity. Environmental grants are only available when it is impossible to recover these costs from the developer of the energy facility.

Some basic definitions are important in understanding just how the CEIP will work and what kinds of assistance are available for what purposes.

First, the CEIP is applicable only to impacts felt within the state's designated coastal zone. This would include impacts from energy development within the coastal zone as well as impacts inside the coastal zone from energy development outside the coastal zone. For example, an electric generating plant may be located outside the coastal zone but cause population influxes or create environmental impacts within the coastal zone. Planning monies could be used to address the impacts of the facility on the coastal zone, even though the facility itself is outside the coastal zone.

Secondly, the act differentiates between energy facility and coastal energy activity for the purposes of allowable uses of the assistance. For example, planning grants can be used to study or plan for the consequences of energy facilities. This is the broader of the two terms and includes electric power plants (including nuclear), petroleum refineries, oil and gas storage tanks, ports and docks necessary for transfer of petroleum, and so forth, as well as manufacturing facilities for energy-related equipment. Remember here that only planning money can be used for the broader category of energy facilities.

Credit assistance (loans and bond guarantees) and environmental grants can only be used to address the impacts from coastal energy activity. Coastal energy activities are a subset of the broader category - energy facilities. To be a coastal energy activity, the proposal must meet narrower criteria such as dependency on coastal waters or proximity of oil or natural gas fields that necessitate facility siting, construction, or expansion or operation in a state's coastal zone. Coastal energy activities are limited by legislation to: OCS-related energy activity, LNG-related energy activity, and energy activity related to the coastal transportation or storage of coal, oil, or gas.

Okay, with the program thus defined, I would now like to move on to how it is being handled in Washington State.

Washington was allotted a little over \$175,000 in planning grants for this year (the planning money from this year is available until September 30, 1978). We are also eligible to apply for about \$79,000 in environmental grants, and have nearly \$6 million available in credit for loans and bond guarantees to help finance public facilities and services required as a direct result of coastal energy activity.

Up to this point, most of the interest in the CEIP on the part of local government has been in the planning grants. Because of this interest, most of the CEIP activities within the DOE have been centered on the planning grants portion of the program. Before planning money can be applied for and subsequently passed through to local government, the Federal Office of Coastal Zone Management (OCZM) required that an interim process for allocating CEIP planning moneys among local units of government be established. Most of our efforts over the last several months have centered on the development of this interim process.

In developing this allocation process, the DOE worked closely with the State Energy Office, the Association of Washington Cities, Washington State Association of Counties, and local units of government. Numerous local contacts were made, information was provided in the CZM newsletter, several direct mailings were made to all CZM jurisdictions, and a workshop for elected officials was held at Port Townsend on June 9-10.

The allocation process was finalized after considering all of the comments received during this review phase. The interim process which was finally agreed upon, consists of a simple formula which considers social and environmental factors associated with the energy facilities which are in various stages of development in Washington's Coastal Zone. Each facility was rated according to the best available information and assigned a relative proportion of the available planning funds. To simplify the allocation process, the amounts for each facility were grouped into three categories and made available to local government for application.

The three categories and amounts assigned to each are: Oil-related studies, \$83,600; OCS Support studies, \$31,700; and Electric Generation studies, \$42,400. Interested local governments were asked to submit CEIP planning applications to the DOE by August 30. As part of the allocation process, a CEIP Advisory Committee was established to assist the DOE in reviewing the local CEIP applications, making allocation decisions, and setting up the permanent allocation process which must be developed prior to applying for CEIP funds next year. The committee is comprised of representatives from four counties, three cities, the Association of Cities, the Association of Counties, the State Energy Office, and the Office of Community Development.

The department received four applications from two eligible local units of government for utilization of the OCS Support funds and Electric Generation funds. The applications were submitted by the Skagit Regional Planning Council and the Grays Harbor Regional Planning Commission. Review committee comments on the application are due today. We expect to submit the grant application to OCZM next week and receive approval by November 1.

As I mentioned before, primary interest so far has been in the planning grants. However, we will be working with the CEIP Advisory Committee over the next several months in not only developing recommended permanent allocation procedures for the planning grants, but for the credit assistance and environmental grant portions of the CEIP as well. The committee will undoubtedly suggest several alternative allocation approaches. The DOE will then circulate these widely prior to finalization.

Hopefully, as the CEIP develops in Washington State, we can continue to minimize the red tape in meeting federal requirements and get the dollars to where they are needed the most in the shortest possible time.

## PUBLIC RIGHTS TO PRIVATE BEACHES, LAKES, AND STREAMS IN WASHINGTON

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### Introduction

Can a private landowner stop the public from using his tideland for walking and digging clams? Can a private landowner fence off his portion of the bed of a lake and keep hunters and fishermen from boating over that area? Can steelheaders be stopped from fishing from privately owned gravel bars on the streams in this state? Can a lakebed owner who has a Shoreline Management Act permit and whose land is zoned for apartment construction actually build an over-water apartment on a non-navigable lake in this state?

The answer to each of the above questions is probably "no." However the development of case and statutory law in Washington on these issues has moved so rapidly in the past ten years that the scope and implications of the new rules are not widely understood. The purpose of this article is to set out briefly these new rules and explore their more significant ramifications.

### What Waters Are Navigable?

Historically the law has distinguished between "navigable and "non-navigable" waters. Although a present-day legal analyst might wish otherwise, this distinction is still vital to an understanding of this field of law.

Navigability has different meanings for different purposes. For example, the federal government has broad legislative powers over "navigable" waters of the United States under the "Commerce Clause" of the federal constitution by which the national government is empowered to regulate interstate and foreign commerce. The USSC has broadened this definition over the past forty years to include those waters which are commercially useful in their natural state, or which can be made so by manmade improvements. Upon reflection the reader will see that this definition is extremely broad, so broad indeed that one wag has said that navigability is determined by whether the water is deep enough to float a supreme court opinion!

But the definition we are concerned with here is more limited, and is used to determine whether the title to the beds of waters passed to the state at statehood. Let me explain why this test is important to our discussion.

The original 13 colonies claimed title to the beds of all navigable waters within their borders at the time they entered the Union. Under the constitutional doctrine of "equality of states", each new state entering the Union automatically acquired the title to the same type of land within their borders from the federal government at the instant of statehood. The test of navigability for this purpose is whether the waters were commercially usable either intrastate or interstate at the date of statehood and does not include waters that can only be made navigable with man-made improvements.

Prior to the 1950s the courts in Washington as well as most other states held that one who owned the bed of a non-navigable lake or stream also owned the surface and had the exclusive right to use the surface over his bed. In Washington this rule is illustrated by the 1900 stream case of Griffith v. Holman 23 Wash. 347. Following the Second World War the public interest in recreational use of these waters caused the courts to evolve a different doctrine, holding that all riparians on non-navigable bodies of water shared a common right of use of the entire surface. The bed owner could only claim exclusive right to the bed, not the surface. These post-war decisions brought the rule for non-navigable waters where the courts have traditionally held there is a public right of use for commerce, navigation and recreation. Two important distinctions exist in Washington however. First, on non-navigable waters the right of common use is limited to riparians and their licensees (those who use the water with a riparian's permission), and is not available automatically to the public unless a city, county or the state opens an access road to allow the public to get onto the lake. Second, a bed owner cannot fill or build over his portion of the bed for a non-water-dependent use even if the area is zoned for such a use and a Shoreline Management Act permit issued. These distinctions will be explored more fully below.

All of the saltwater bays and estuaries in Washington are navigable, as well as the larger rivers such as the Snohomish, Lower Skagit, and the entire Columbia, and the larger lakes such as Lake Washington, Lake Union, Lake Whatcom, Lake Sammamish, and Lake Chelan. Smaller lakes, ranging in size up to three or four hundred acres, depending on location, are generally non-navigable.

On navigable waters the state's original ownership went to the ordinary high tide line for salt water, and to mean high water on fresh water lakes and streams.

In many cases title to the beds of navigable waters, although initially vested in the state, was subsequently conveyed into private ownership. On Puget Sound something over 50% of the tidelands were sold by the state



to private owners prior to 1974 when the legislature banned further sales (RCW 97.01.470). Transfer of title to the bed to private ownership does not change the classification of the water from navigable to non-navigable.

#### Public Rights To Use Navigable Waters

The public has the right to boat, swim, fish and otherwise use the surface of all navigable waters of the state, whether or not the beds are publicly or privately owned. Thus the private owner of a tideflat cannot lawfully fence off his land and thus prohibit boating, hunting, fishing, waterskiing or swimming.

Under the Lake Chelan decision (*Wilbour v. Gallagher*, 77 Wn.2d 737 (1-69)), navigable waters cannot be filled, or built over, unless a specific permit of such activity has been issued (now under the Shoreline Management Act) by the local city or county government, and approval has been given by the U.S. Army Corps of Engineers (Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344; and Section 10, Rivers and Harbors Act, 1899, 33 U.S.C. 403).

#### The Public Trust Doctrine

The Washington courts have never relied on the public trust doctrine to protect the public interest in navigable waters. However this doctrine has played a vital role in California, Wisconsin, Michigan, Illinois, and Massachusetts.

The leading case in the area is *Ill. Central Ry. Co. v. Ill.*, 146 US 387 (1892), where the legislature of Illinois conveyed the bed of Lake Michigan in front of Chicago to the Illinois Central Ry. and four years later repealed the conveyance. The Ill. Central Ry. Co. went to the U.S. Supreme Court arguing that the state legislature could not do this, at least not without paying full compensation to the Railway for the land. The USSC held that these lands, being the bed of a navigable waterway in front of a major city, were burdened by a public trust so that the first conveyance to the railway was revocable, and the "rescission" was valid without payment of compensation. The California courts have used this doctrine to nullify or prohibit sales of the beds of navigable waters to private ownership, and to interpret such conveyances as transferring a "bare" legal title with virtually no rights of use. Other states have relied on the doctrine for similar purposes.

The Washington courts have never relied on the public trust doctrine. Instead this state seems to have relied on the harbor line system established in the Constitution to protect the public interest in navigable waters.

Article XV of the Washington Constitution provides for the creation of a Harbor Line Commission which is responsible for establishing inner and

outer harbor lines in front of and for one mile on either side of the city limits of coastal cities. The inner harbor line is usually on the surveyed meander line (about hightide line) if the tidelands are state owned, and along the lowtide line if the tidelands are privately owned.

Until recently the area shoreward of the Inner Harbor Line could be sold by the state into private ownership and was legally treated about the same as land, so it could be filled and built on the same as any other land. Now under the Shoreline Management Act the area shoreward of the Inner Harbor Line is sometimes zoned for water-related uses only. The area between the inner and outer harbor lines can only be leased by the state, for up to thirty years, and can only be used for docks, wharves, streets and other conveniences of navigation and commerce (although in some cases such as Seattle's Harbor Island this limitation is construed pretty flexibly). The area outside the outer harbor line can never be sold or leased to private ownership and must be forever held for public use for commerce and navigation. Harbor lines have been drawn for most but not all of the cities along the coast.

The Lake Chelan decision (Wilbour v. Gallagher, 77 w<sup>2</sup> 306 (1969) provided further protection to the public interest in the use of navigable waters by holding essentially that navigable waters could not be filled, even where the bed was privately owned, without a showing that some public agency had zoned the area for such a fill and a permit authorizing the fill issued. The reason was that a fill would interfere with the public's right of navigation on these waters.

It was partly in response to the Lake Chelan decision that the SMA was enacted establishing a zoning and permit program for managing all of the navigable waters of the state.

Protection of the public interest in navigable waters through the harbor line system and more recently through the Lake Chelan doctrine and the SMA have meant that the public trust doctrine is relatively less important in this state.

#### Navigation Servitude

Under a doctrine called "navigation servitude" any docks, wharves, railroad tracks, oyster beds, or other structures located in navigable waters, whether on publicly or privately owned beds, can be removed without compensation, by the appropriate state or federal agency if the structure impairs navigation. This doctrine applies no matter how long the structure or activity has been in place, unless it was installed under specific state and federal permits. No "prescriptive" rights are ever acquired against the state or federal government. Any of the hundreds or possibly thousands of docks, wharves, fills, oyster beds, etc., that have been placed in Puget Sound, Lake Washington, Lake Sammamish or other navigable waters over the past hundred years could be removed without compensation under this doctrine if necessary to improve

navigation or to complete a federal or state project.

The Coast Guard, or in lieu thereof the local or state government, also has authority to issue regulations governing the operation of boats on navigable waters.

#### Public Rights To Use Tidelands Along The Ocean

Most of the tidelands along the ocean (as distinguished from the Straits of Juan de Fuca, and Puget Sound), are owned by the state and for that reason are available for public use. As to privately owned tidelands the Attorney General opined in 1970 (AGO 1970 No. 27) that the public has a right to use these lands on the basis of the Washington Constitution (Art. xvii) and the Seashore Conservation Act (RCW 43.51.650).

#### Public Rights To Use Dry Sands Areas - The Doctrine of Custom

The dry sands area above ordinary high tide along the ocean beaches, whether publicly or privately owned are available for public use for recreation under a 1970 Attorney General's opinion (AGO 1970, No. 27) except for areas within the Quinault Indian Reservation. This public right results from the legal doctrine of "custom" which was first applied along the Oregon Coast by the Oregon Supreme Court in Hay v. Thornton 462 p. 2d 671 (1969). In this case the court said there were seven elements for establishing custom. (1) the area must have been used by the public so long that the memory of man runneth not to the contrary, (2) the use must have continued without interruption, (3) it must have been peaceable, and acquiesced in, (4) it must be reasonable, (5) it must be certain and definable, (6) though established by consent it must be compulsory in its operation, (7) it must be consistent with other customs and laws.

The Custom Doctrine has not been applied to any areas along the Straits of Juan de Fuca, Hood Canal, or Puget Sound, although it is conceivable that a court could find the elements necessary to establish custom at least for some parts of these waters.

#### The Doctrine of Prescription

On those beaches where the public has walked, moored boats, and picnicked for more than ten years a court might find that a legal right to such use exists, not from the doctrine of custom, but from the more limited doctrine of prescription. The custom doctrine applied to all the dry sands areas along the ocean so there was no need to prove public use of each particular tract. The prescription doctrine, on the other hand, requires proof that the particular land (e.g., the tideland owned by John Doe), was used by the public for the required period of time. Obvious candidates for such a prescription ruling would be some of the privately owned but publicly used beaches around Bainbridge Island, in front of the Village of Indianola on the Kitsap Peninsula, and on the beaches near Seattle.

The prescription doctrine might also apply to the digging of clams on tidelands if it has been done for more than the required ten years. Thus the private owner could not fence off the area, or stop members of the public from walking on the tideland, clam digging or picnicking.

Although the Washington Supreme Court has said that prescriptive rights are "not favored" in the law, these rights can nonetheless be established if the requisite elements are proven. The Washington court defined the essential elements in Rodruck v. Sand Point Maintenance Comm. 48 w. 2d 565 (1956), saying that the claimant of such right must prove his use was open, notorious, continuous, uninterrupted, over a defined area, adverse to the owner of the land, and with the actual or constructive knowledge of the landowner at a time when he was able to (but didn't) assert and enforce his rights.

#### The Doctrine of Dedication

Still a third doctrine that might be asserted by members of the public to establish a legal right to use coastal lands is dedication. In Gion v. Santa Cruz 465 p. 2d 50 (1970) the California Supreme Court held that a private landowner on the coast had impliedly "dedicated" his land to public use by allowing the public to use and improve the land for more than 60 years. The opinion further suggested that such public use for a period as short as six or eight years might give rise to implied dedication. The Washington courts have not gone so far (see City of Spokane v. Catholic Bishop of Spokane, 33 w. 2d 496 (1949), and have shown distinctly less enthusiasm for this doctrine. However the theory of implied dedication is also recognized in this state.

The doctrines of custom, prescription, and dedication might also be asserted for another important shoreline area, that is to the privately owned beds of navigable and non-navigable streams. As indicated earlier, although the beds of navigable waters were originally owned by the state some of these lands have subsequently been conveyed into private ownership. The beds of non-navigable streams are generally owned by the riparians on either side. On many navigable and non-navigable streams in Washington, fishermen have from time immemorial used exposed sand and gravel bars for trout and steelhead fishing. It is quite possible that a court would find that such use has ripened into a legal right through the doctrine of custom--because of ancient, widely accepted public practice. Possibly a court would apply this doctrine only to certain rivers or streams. Alternatively a court might hold the public had acquired a "prescriptive" or "dedicated" right to use gravel bars along a particular river for fishing sites. Certainly it seems likely that one of these theories would be declared by the courts to protect this long-standing practice of the fishing public in Washington.

#### Public Rights To Use Non-navigable Waters

The state did not acquire title to the beds of non-navigable waters at

statehood. The title to these lands remained in the federal government. As homesteaders acquired federal patents to riparian lands they automatically acquired title to the beds in front of their land, out to the center of the lake, or the thread of the stream. Thus except in national parks and forests most of the beds of non-navigable waters are privately owned.

In spite of this private ownership all the riparians on these bodies of water have a common right of use of the entire surface in Washington under the case of Snively v. Jaber 48 w.2d 815 (1956). Although the Snively case involved a lake there seems little doubt that the courts would apply the same rule to the non-navigable streams of the State.

This common right of use extends to licensees of riparians as well, that is to those who have a riparian's permission to use the water, including paying or non-paying guests of riparians, patrons of resorts, and members of the public who enter the lake through state game department access roads or public parks. The courts have held that the number of people entering a lake from a resort or public access road can be limited if there are too many for the size of the lake or their activities constitute a nuisance (Bottom v. State 69 w. 2d 752 (1966)).

The riparian right of common use allows riparians and their licensees to swim, boat, fish, and water ski, over the entire lake including the portion overlying land owned by others. A bedowner cannot fence off his portion of the bed or otherwise object to such use so long as it is reasonable and does not constitute a nuisance. Water skiing, fishing and other activities are, of course, subject to safety and conservation regulations by the local and state governments.

#### The Right To Fill Or Build Over Non-navigable Lakes

The 1968 case of Bach v. Sarich 74 w.2d 575 held that a riparian owner on Bitter Lake in the northern part of Seattle, who also owned the bed in front of his land, could not build an apartment extending out into the lake because such a structure was not "water-dependent" like a dock or marina. An apartment could just as well be built on the upland.

This case added a new and important twist to the doctrine of riparian rights law in this state. Formerly the rule had been that a riparian owner could fill or build out into a lake so long as his structure was "reasonable" in relation to other riparian uses. Under this earlier rule a good many fills and buildings were installed on the non-navigable lakes of the State. The Bach rule prohibits absolutely any fill or building on non-navigable lakes unless they are water-dependent, thus effectively and permanently zoning all non-navigable lakes for water-related uses only.

The implications of the Bach doctrine are significant. The common right of use of riparians and their licensees is essentially an easement over the entire surface of a non-navigable lake. A bed owner cannot fill or

build anything on his portion of the bed that would interfere with this easement unless the structure is water-dependent, even though his land is zoned for such use and a Shoreline Management Act permit is issued. The only way a bed owner can legally make a non-water-dependent use of his bed is to purchase the right to do so from all other riparians. Even a city, county, or the state could not fill part of a non-navigable lake for a street, parking lot, or any other non-water-dependent use without purchasing or condemning the other riparians' easement over that portion of the lake.

The Shoreline Management Act provides still another potential veto of any overwater construction or filling, for lakes over 20 acres, either navigable or non-navigable. Under this Act the lakebed can be zoned against particular uses, and permits for those uses denied. In general, the SMA relies on water dependency as one of the principal criteria for zoning and issuance of permits for overwater construction.

Under the Federal Water Pollution Control Act Amendments of 1972, Section 404, the U.S. Army Corps of Engineers has authority to deny permits for fills or buildings over most navigable and non-navigable waters of the state. In practice the Corps generally defers to the state on such matters because of Washington's highly developed shoreline management program, but in the final analysis the Corps can override the state program if it wishes to do so.

#### The Right to Fill or Build Over Non-navigable Streams

The Washington courts have not yet said whether the rule of Bach v. Sarich applies to non-navigable streams, as contrasted to lakes. The application of the rule on streams might be different in view of the natural seasonal fluctuation of these waters, and the natural changes in the banks induced by erosion. Yet it seems plausible that a court would hold that any filling or building over a non-navigable stream must also be water-dependent.

#### Conclusion

The clear post-war trend of the law in Washington as elsewhere has been toward recognition of a broader range of public rights in the beds, shores, waters, and adjacent uplands of both navigable and non-navigable waters. A panoply of court-created doctrines have combined with recent legislation such as the Shoreline Management Act to support this trend. These doctrines have wrought significant changes in the law in this field.

In summary, Washington law now provides that the public has a right to use the navigable waters of the state for commerce, recreation, and other purposes and that no fills, structures or other impediments to such use can be placed in those waters without the affirmative approval of the local, state, and national governments. Docks, wharves, fills and other structures that have been placed in these waters over the past hundred years, without explicit and affirmative authorization from the federal

government can be removed without payment of compensation if necessary to aid navigation. The public probably has a right to use all but Indian reservation tidelands and dry sands areas on the ocean beaches in Washington for recreational purposes even if these lands are privately owned. The public probably has the legal right to continue using many of the privately owned tidelands of the Straits of Juan de Fuca, Hood Canal and Puget Sound for walking, recreation, and even clam digging if such use has been made historically. This public right probably also extends to the privately owned beds, gravel and sand bars of the rivers of the state traditionally used by steelheaders, trout fishermen, and hunters. Riparians and their licensees on non-navigable lakes and streams have a common right of use of the entire surface of the water, whether publicly or privately owned. No one can fill or build a non-water-dependent structure on these waters even with local, state and federal approval, unless they purchase or condemn the right to do so from all other riparians.

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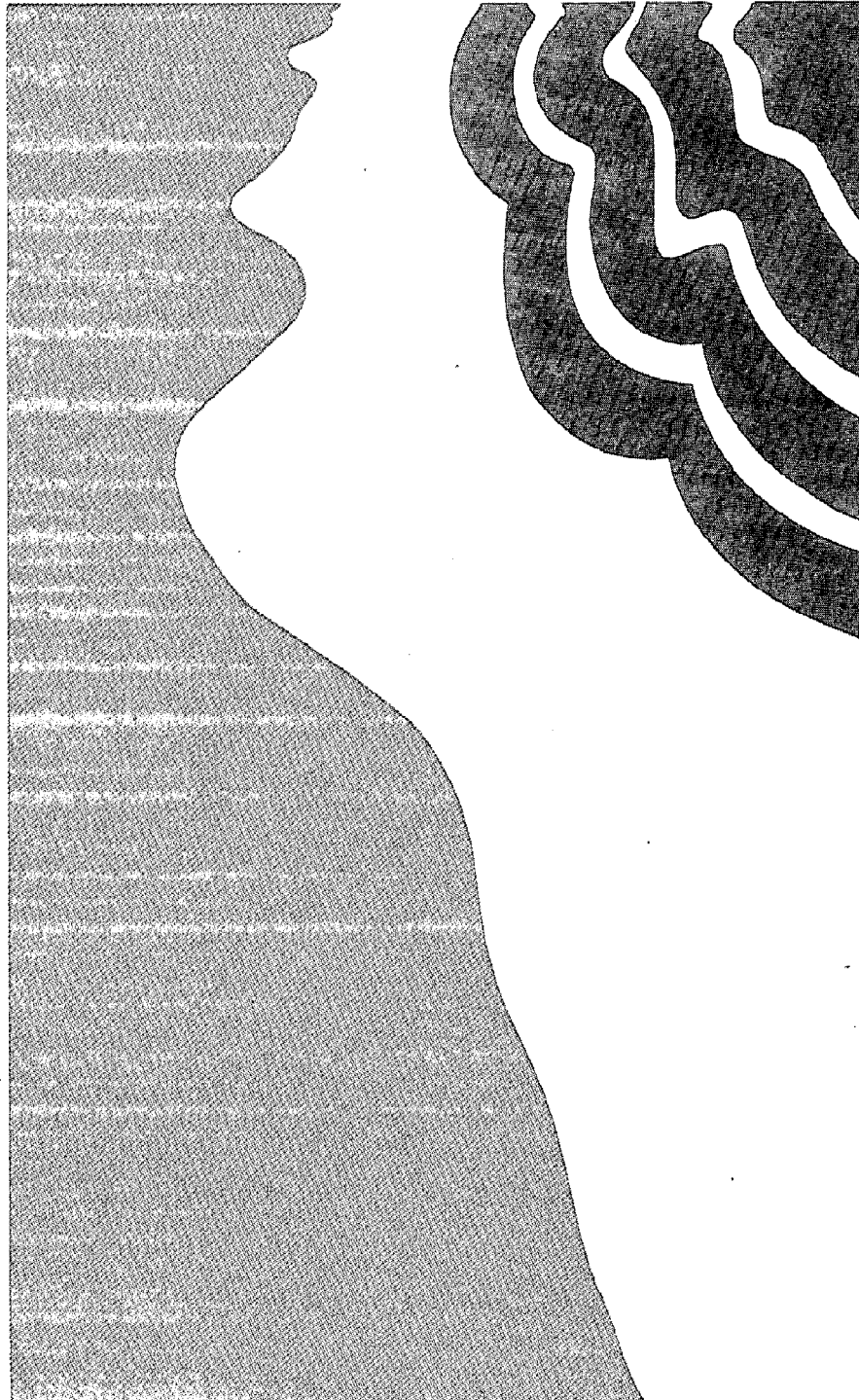
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**SESSION D:  
SHORELINES MANAGEMENT  
ADMINISTRATION**



## MASTER PROGRAM ENFORCEMENT

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The Washington State Shoreline Management Act provides an extensive set of remedies to enforce master programs. The Shoreline Management Act authorizes injunctive and other forms of judicial relief:

The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

RCW 90.58.210.

The Shoreline Management Act authorizes private and public suits for damages resulting from violations:

Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right

to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

RCW 90.58.230.

The Shoreline Management Act also authorizes gross misdemeanor penalties to be enforced by the local prosecuting attorney:

In addition to incurring civil liability under RCW 90.58.210, any person found to have willfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five or more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars.

RCW 90.58.220.

In addition to the enforcement tools available in the Shoreline Management Act itself, King County has added additional enforcement procedures and penalties at the local level. King County's procedures include authorization for stop work orders similar to those issued under the Uniform Building Code. Violations of the King County Master Program can also be enforced by a ten dollar per day per violation civil penalty (the penalty is twenty dollars per day for the second separate violation and thirty dollars per day for the third separate violation within any five-year period). This

is a useful tool for the routine-type violation. Finally, King County has authorized a local administrative hearing before the Zoning and Subdivision Examiner for appeals from local enforcement orders. See King County Ordinance No. 2909 (1976); King County Code Title 23.

Violations fall into different categories, each requiring its own type of response. Category 1 constitutes technical violations where there is no possible hazard to personal health, safety, or property, and no adverse environmental impact. These violations (e.g. the fence which is 12" too high or the setback which is 2' less than required) may not warrant any formal enforcement action. Category 2 consists of those violations which are material and warrant assessment of a civil fine and stop work order. Category 3 consists of violations which present immediate and serious hazards to personal health or safety or irreparable harm to the environment. These violations warrant civil injunctive action, request for damages to restore the affected area and other corrective relief. These require judicial action usually. Category 4 consists of those actions warranting criminal action. These are frequently of the type described in Category 3 where a violation is repeated or continued after warning or notification to cease. In King County, we have experienced shoreline violations in each of these categories. We have succeeded in obtaining Shoreline Hearings Board and/or judicial orders to cease landfills (Kaeser), remove landfills (Kane), remove a boat launch and heliport facility (Dabroe), restore an illegal road and serve jail time (Jacobson).

An effective shoreline enforcement program requires a trained inspection force, a working relationship between the inspectors and the local government attorneys, and the resources and patience to carry out protracted litigation if necessary.

**CURRENT STATUS OF THE WASHINGTON COASTAL ZONE  
MANAGEMENT PROGRAM AMENDMENT**

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Summary

The State of Washington was the first state to receive federal approval of its coastal zone program and is the first state to seek an amendment of its approved program. While federal regulations have recently been published which furnish some guidance, it is apparent that the amendment procedures will continue to evolve as new issues arise. The process will also involve an exceptionally high level of citizen awareness and involvement.

The formal process of amending the federally approved Washington Coastal Zone Management Program was initiated on April 15, 1977. On that date the director of the Department of Ecology, Wilbur G. Hallauer, indicated in a letter to Robert Knecht of the Office of Coastal Zone Management the intent of the state to amend the program and requested information regarding the appropriate procedures to accomplish the amendment. In his response of May 17, 1977, Mr. Knecht discussed the distinction between a program amendment and a program refinement, the latter being a minor adjustment of the program which can be processed and approved administratively. Amendments, on the other hand, undergo the same review and approval procedure as was followed with the entire program, including public hearings, review by federal agencies and compliance with the National Environmental Policy Act.

In addition, Mr. Knecht specified that the state should submit the following information:

1. a formal request for an amendment or refinement,
2. a description of the nature of the change,
3. justification that the proposal complies with the procedures specified in the appropriate federal regulations,

4. evidence of public notice and degree and nature of public interest, and
5. evidence of environmental impacts of the proposed change.

On July 20, 1977, Governor Ray submitted a letter to Secretary of Commerce, Juanita Kreps, in which the Governor formally requested an amendment of the program and described generally the nature of the change. The Governor also indicated her desire to hold at least two public hearings on the matter and mentioned that an environmental analysis of the proposed change would be forwarded within a short period of time.

Specifically, the proposed amendment involves the deletion of a policy statement contained in the coastal zone program dealing with the siting of a single, major crude petroleum transfer site in Washington's coastal zone. The policy statement says, in part, that:

The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the Washington State coastal zone management program. State programs, and specifically state actions in pursuit of the intent of federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts.

The policy further specifies that:

The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the state coastal zone management program.

During the 1977 legislative session, the House and Senate passed SHB 743 which would have set in law language similar to that in the coastal zone management program. The Governor vetoed that bill, for reasons set forth in her veto message to the House and in her letter to Secretary Kreps. In essence, she expressed concern that the requirements are unduly restrictive, that neither the economic nor the environmental consequences of the restrictions have been adequately analyzed and that passage of law would have had the practical effect of granting

an exclusive franchise to the corporation finally certified. More fundamentally, she emphasized her firm belief that the Washington State Energy Facility Site Evaluation Council (EFSEC) is the appropriate forum for reviewing and evaluating applications for terminal facilities. As stated in her letter to Secretary Kreps, "The net effect of eliminating the subject policy is to keep all options open and to allow a more thorough examination of costs and benefits associated with all feasible means of landing crude oil in the state."

Procedurally, the Department of Ecology is treating the proposed program change as an amendment (as opposed to a refinement) and is in the process of complying with the requirements outlined by the Office of Coastal Zone Management. To allow an opportunity for public review and comment, hearings have been scheduled for the evenings of October 4, 5 and 6 at Bellingham, Seattle and Port Angeles, respectively. The hearings are being conducted by the Washington State Ecological Commission, a group of concerned private citizens representing various interests which was established by the department's organic act (Chapter 43.21A RCW) and charged with providing advice and recommendations to the director of the department. The Honorable Matthew W. Hill, former Chief Justice of the Washington State Supreme Court, will be the hearing officer.

In addition, a detailed analysis of the environmental ramifications of the proposed policy deletion has been forwarded to Secretary Kreps. The basic concept underlying the analysis is that the deletion of the policy which specifies and identifies a single terminal has the net effect of opening all other options for handling incoming crude oil in the state. It is assumed that the deletion of the policy per se has no direct environmental impact since an alternative specific site is not being proposed as an alternative policy. The analysis, therefore, places primary emphasis on reviewing the various siting alternatives which have previously been identified, both within and outside of the state.

Sites within the state that have received the most attention and are therefore the subject of analysis are:

1. Northern Tier proposal at or near Port Angeles - the subalternatives of this basic alternative include: (a) transshipment via pipeline around Puget Sound to the mid-west with Washington refineries continued to be supplied by tanker, (b) transshipment around Puget Sound with a spur to the refineries and (c) transshipment from Port Angeles via submarine pipeline to the Cherry Point/Anacortes vicinity.
2. Cherry Point, with transshipment to the mid-west - there are two subalternatives: (a) a new, all U. S. pipeline to the mid-west, and (b) Trans Mountain pipeline through Canada to the mid-west.
3. Burrows Bay - a new terminal on the west side of Fidalgo Island with transshipment to the mid-west, and

4. Whidbey Island - a new terminal located on the southwest.

Following an introduction which describes the proposed action and summarizes the available alternatives, the analysis surveys the existing conditions within which the oil transport issue is being discussed. Information from the department's baseline program is utilized extensively in describing existing conditions, as is the recently completed study done for the department by Arthur D. Little, Inc. The final section of the report analyzes the probable impacts on the physical environment resulting from the various alternatives, including impacts on land use at the sites; effects on terrestrial biology, air quality and water quality; and general impacts of oil in the marine environment. An analysis is also made of probable impacts on the infrastructure of the political jurisdictions affected, especially looking at induced population growth, school district capabilities, municipal water supply, wastewater treatment, solid waste, and transportation. This portion of the study also borrows heavily from the work of A. D. Little.

Following completion of the Ecological Commission hearings, including a period of time after the hearings to receive additional comments, the entire hearing record will be forwarded to the Secretary of Commerce. Federal regulations then require that the associate administrator for coastal zone management (NOAA) review the requested change using essentially the same criteria as was used in reviewing and approving the entire program.

Upon receipt of the hearings materials, OCZM will determine whether to amend the existing Final Environmental Impact Statement (FEIS) for the Washington program or to prepare a new statement. Presumably, the analysis which DOE submitted to the Secretary of Commerce will provide a majority of the information needed for the EIS. The draft statement will then be distributed to principally affected federal agencies and Draft Environmental Impact Statement (DEIS) reviewers. OCZM assumes that the process of DEIS preparation, printing, notification, and publication in the Federal Register of the location and date of public hearing on the DEIS will normally take about 45 days.

Reviewers of the DEIS will have an additional 45 days from the date they receive it to provide comments. Federal regulations require that during this time period, a public hearing will be held in one or more locations in the state to receive comment on the DEIS and the proposed amendment, with an additional comment period of 15 days following the hearing(s).

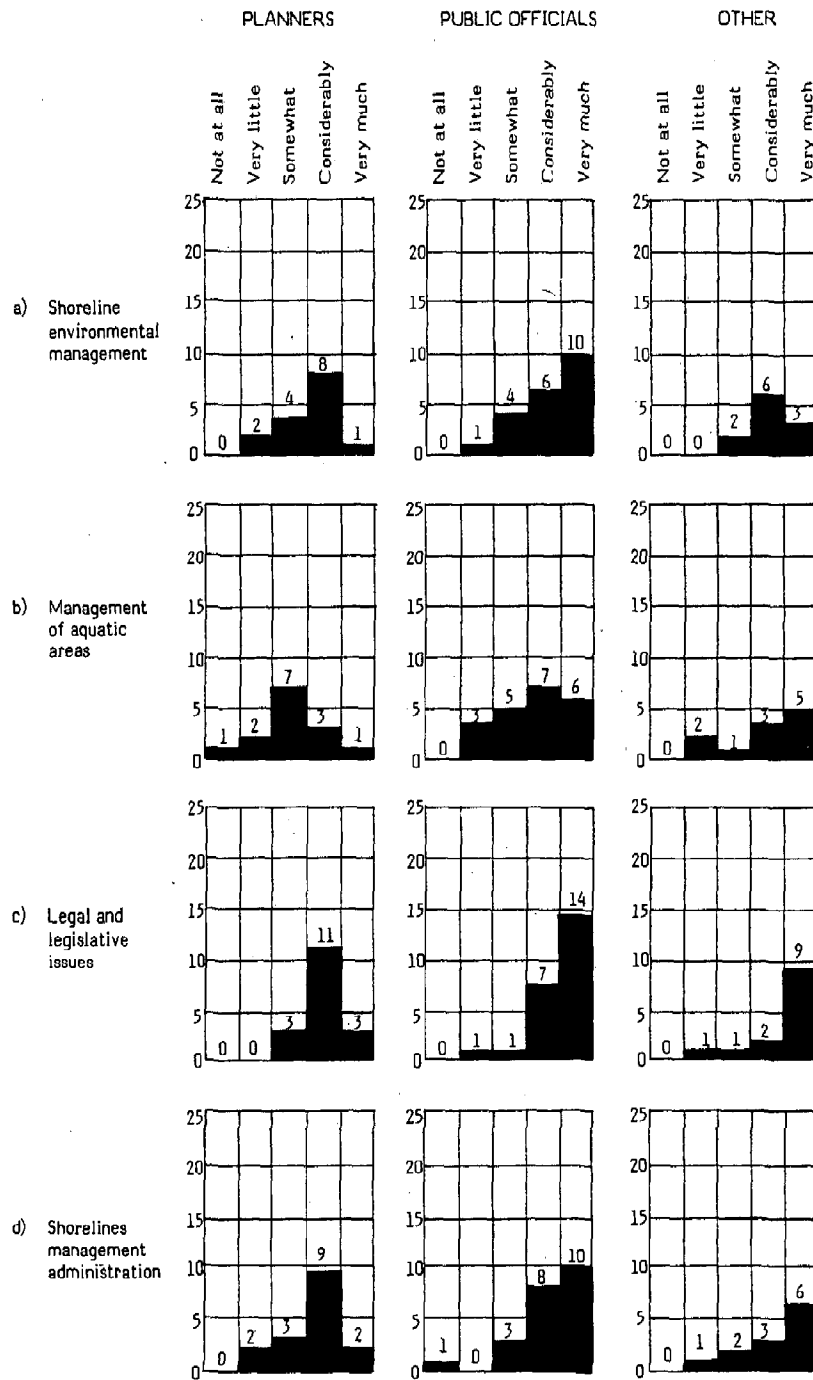
After that period, a minimum of three months will be required by OCZM to review and evaluate comments, to respond to those comments, and to prepare and print a Final Environmental Impact Statement. Notice of the availability of the FEIS will be published in the Federal Register. Final Statements will be redistributed, and an additional thirty days will be given for review of the Final Statement. Finally, the associate administrator of OCZM must review and evaluate all comments received during that thirty-day period. He must then take action on the proposed



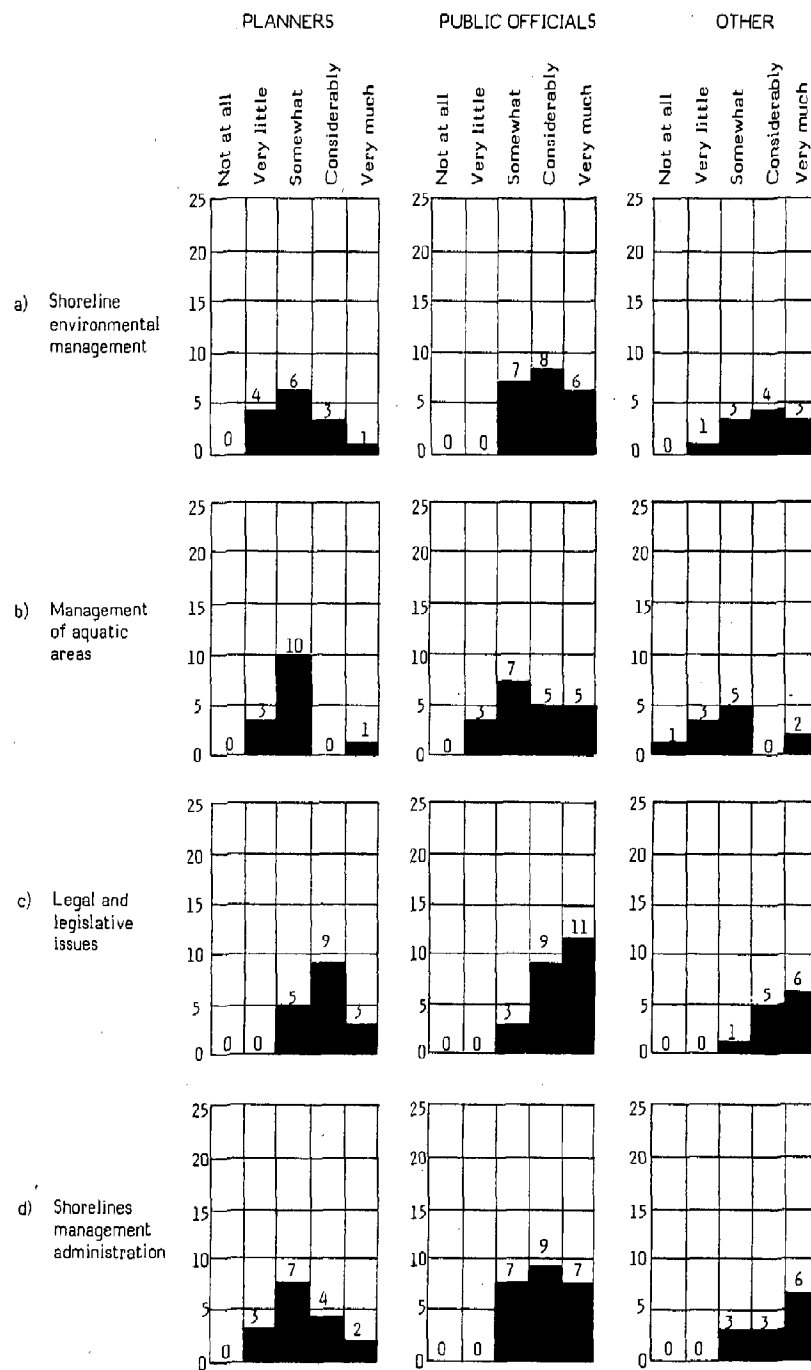
amendment. In all, assuming the process meets all minimum time requirements, a decision can be made no sooner than seven months from the date that all materials have been forwarded by the state. According to the present schedule, this will be in June of 1978.

## OBSERVATIONS ABOUT THE PROGRAM

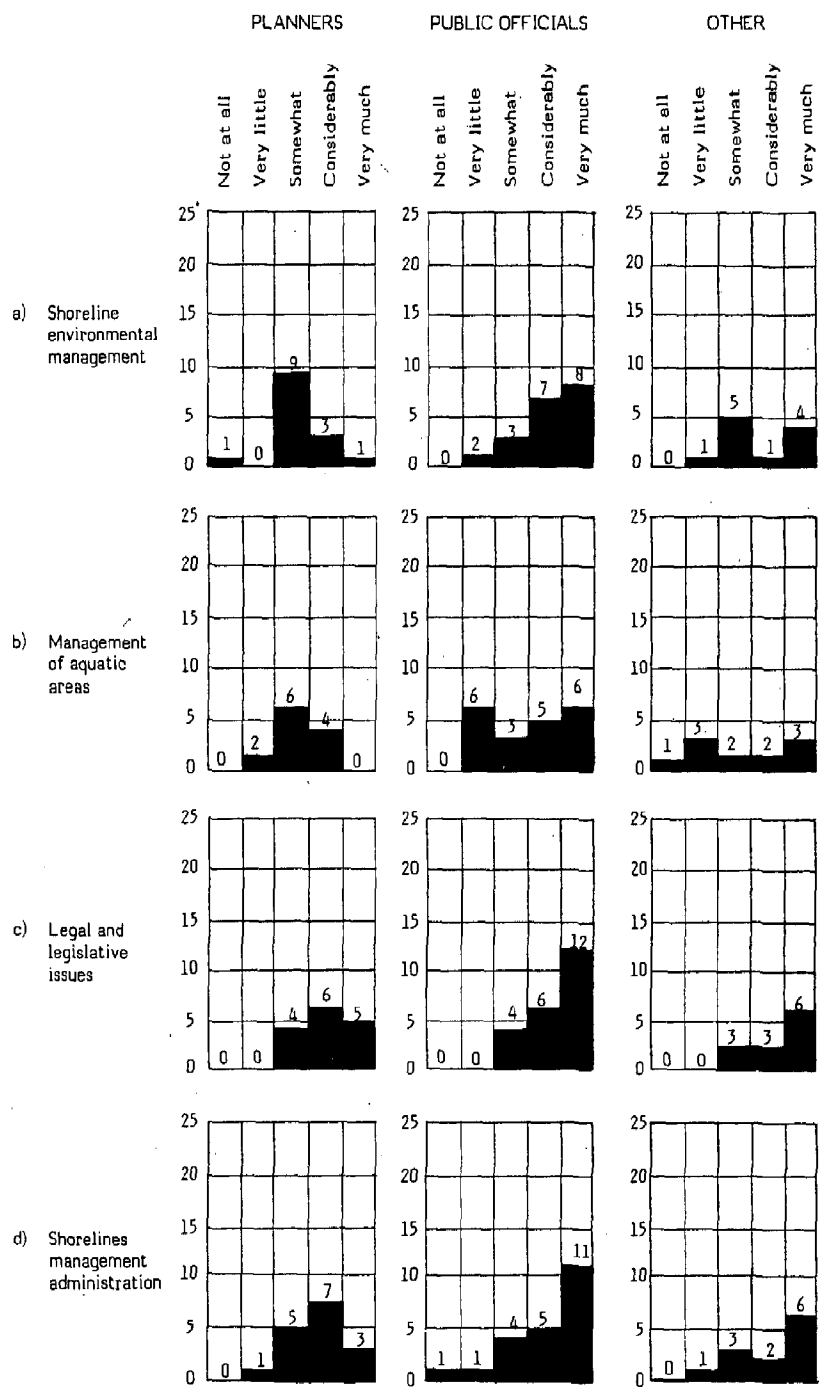
Were the program sessions relevant to your professional needs?



Has your knowledge of these issues been increased by the program elements?



Is this knowledge applicable to your own or your department's role in shorelines management?



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